



DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

45 CFR Part 1324

RIN: 0985-AA18

Adult Protective Services Functions and Grant Programs

AGENCY: Administration for Community Living (ACL), Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Administration for Community Living (ACL) within the Department of Health and Human Services (“the Department” or HHS) is issuing this Notice of Proposed Rulemaking (NPRM) to modify the implementing regulations of the Older Americans Act of 1965 (“the Act” or OAA) to add a new subpart (Subpart D) related to Adult Protective Services (APS).

DATES: To be assured consideration, comments must be received no later than [INSERT 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: You may submit comments, including mass comment submissions, to this proposed rule, identified by RIN Number 0985-AA18, by any of the following methods:

- *Electronically.* You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow the “Submit a comment” instructions.
- *Regular, Express, or Overnight Mail:* You may mail written comments to the following address:

Administration on Aging, Administration for Community Living, Department of Health and Human Services, Attention: Stephanie Whittier Eliason, 330 C Street SW,
Washington, DC 20201.

Do not include any personally identifiable information (such as name, address, or other contact

information) or confidential business information that you do not want publicly disclosed. All comments may be posted without change to content to <https://www.regulations.gov> and can be retrieved by most internet search engines. No deletions, modifications, or redactions will be made to comments received.

We will consider all comments received or officially postmarked by the methods and due date specified above. Because of the large number of public comments we normally receive on *Federal Register* documents, we are not able to provide individual acknowledgements of receipt. Please allow sufficient time for mailed comments to be timely received in the event of delivery or security delays. Electronic comments with attachments should be in Microsoft Word or Portable Document Format (PDF).

Please note that comments submitted by fax or email, and those submitted or postmarked after the comment period, will not be accepted.

Inspection of Public Comments: All comments received before the close of the comment period will be available for viewing by the public, including personally identifiable or confidential business information that is included in a comment. You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make. HHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of <https://www.regulations.gov>. Follow the search instructions on that website to view the public comments.

FOR FURTHER INFORMATION CONTACT: Stephanie Whittier Eliason, Team Lead, Office of Elder Justice and Adult Protective Services, Administration on Aging, Administration for Community Living, Department of Health and Human Services, 330 C Street SW, Washington, DC 20201. Email: Stephanie.WhittierEliason@acl.hhs.gov, Telephone: (202) 795-7467 or (TDD).

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: Upon request, the Department will provide an accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed regulations. To schedule an appointment for this type of accommodation or auxiliary aid, please call (202) 795-7467 or email Stephanie.WhittierEliason@acl.hhs.gov.

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I. Background

The Administration for Community Living (ACL) within the Department of Health and Human Services (HHS) is issuing this Notice of Proposed Rulemaking to modify 45 CFR part 1324 of the implementing regulations of the Older Americans Act of 1965 (OAA or “the Act”) to add a new subpart (Subpart D). The proposed rules exercise ACL’s authority to regulate Adult Protective Service (APS) systems under section 201 of the Act, 42 U.S.C. 3011(e)(3) and section 2042(a) of the Elder Justice Act (EJA), 42 U.S.C. 1397m-1(a). Currently, there are no Federal standards for APS systems, leading to wide variation in policies and procedures, thus resulting in inconsistent service delivery across States and confusion for APS systems and the general public, including victims of adult maltreatment. Historically, APS programs and administrators have lacked reliable information and guidance on best practices and standards for conducting case investigations and for staffing and managing APS programs. These challenges have impaired States’ ability to respond in an effective and timely way to reports of adult maltreatment and to assess client outcomes and the effectiveness of the services they are providing. Nationally, this results in a fragmented and unequal system that can hinder coordination and lead to the absence of critical support for some people experiencing maltreatment. The proposed regulation will create a national standard to elevate evidence-informed practices, bring clarity and uniformity to programs, and improve the quality of service delivery for adult maltreatment victims and potential victims.

Adult maltreatment is associated with significant physical and mental health consequences as well as financial losses. Older adults and people with disabilities may also experience deteriorated family relationships, diminished autonomy, and institutionalization, all of which can impact quality of life.¹ Studies have found that at least one in ten community-dwelling older adults experienced some form of abuse in the prior year.² In addition, a recent systematic review that collected self-reports of abuse by residents found high levels of institutional abuse.³

APS programs often link adults subject to maltreatment to community social, physical health, behavioral health, and legal services which help them maintain independence in the settings they prefer to live. APS programs are also often the avenue through which adult maltreatment is reported to police or other agencies of the criminal justice system. As such, APS plays a critical role in the lives of adults more likely to be subjected to maltreatment, particularly older adults and adults with disabilities. APS programs receive and respond to reports of adult maltreatment, and work closely with clients and a wide variety of allied professionals to

¹ Mengting Li & Xinqi Dong, *Association Between Different Forms of Elder Mistreatment and Cognitive Change*, 33 J. OF AGING AND HEALTH, 249 (2020), <https://pubmed.ncbi.nlm.nih.gov/33249977/>; RUSS NEUHART, ELDER ABUSE: FORENSIC, LEGAL AND MEDICAL ASPECTS, 163 (Amy Carney ed., 2019); Rosemary B. Hughes et al, *The Relation of Abuse to Physical and Psychological Health in Adults with Developmental Disabilities*, 12 DISABILITY AND HEALTH J., 227 (2019), <https://doi.org/10.1016/j.dhjo.2018.09.007>; Joy S. Ernst & Tina Maschi, *Trauma-Informed Care and Elder Abuse: A Synergistic Alliance*, 30 J. OF ELDER ABUSE & NEGLECT, 354 (2018), <https://pubmed.ncbi.nlm.nih.gov/30132733/>.

² Ron Acierno et al., *Prevalence and Correlates of Emotional, Physical, Sexual, and Financial Abuse and Potential Neglect in the United States: The National Elder Mistreatment Study*, 100 AMER. J. OF PUB. HEALTH 292 (2010), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2804623/>; Andre Rosay & Carrie Mulford, *Prevalence Estimates & Correlates of Elder Abuse in the United States: The National Intimate Partner and Sexual Violence Survey*, 29(1) J. OF ELDER ABUSE AND NEGLECT, 1 (2017); E-Shien Chang & Becca R Levy, *High Prevalence of Elder Abuse During the COVID-19 Pandemic: Risk and Resilience Factors*, 29(11) AMER. J. OF GERIATRIC PSYCHIATRY (2021), doi.org/10.1016/j.jagp.2021.01.007 <https://pubmed.ncbi.nlm.nih.gov/27782784/#:~:text=More%20than%201%20in%2010,both%20intimate%20and%20nonintimate%20partners>; Yongjie Yon et al., *Elder Abuse Prevalence in Community Settings: A Systematic Review and Meta-analysis*, 5(2) LANCET GLOBAL HEALTH 147 (2017); Furthermore, it is estimated that for every incident of abuse reported to authorities, nearly 24 additional cases remain undetected. See Jennifer Storey, *Risk Factors for Abuse and Neglect: A Review of the Literature*, 50 AGGRESSION AND VIOLENT BEHAVIOR 101339 (2020), <https://www.sciencedirect.com/science/article/abs/pii/S1359178918303471>.

³ Prevalence estimates for abuse subtypes reported by institutionalized older residents were highest for psychological abuse (33.4%), followed by physical (14.1%), financial (13.8%), neglect (11.6%), and sexual abuse (1.9%); Yongjie Yon et. al., *The Prevalence of Elder Abuse in Institutional Settings: A Systematic Review and Meta-Analysis*, 29 EUR. J. OF PUB. HEALTH 58 (2019).

maximize safety and independence and provide a range of services to the people they serve, including:

- receiving and investigating reports of adult maltreatment;
- case planning, monitoring, evaluation, and other case work and services; and
- providing, arranging for, or facilitating the provision of medical, social service, economic, legal, housing, law enforcement, or other protective, emergency, or support services.

APS is a social and human services program. Working collaboratively and with the consent of the victim, APS caseworkers develop service plans and connect the victim to social, health, and human services. The focus of APS is entirely on assisting the victim to recover from the experience of maltreatment. As a social services program, the “findings” in an APS case are not legal determinations, either civil or criminal. Rather, if APS suspects that an act of maltreatment falls under a State’s criminal statutes, APS will refer the case to law enforcement.

As discussed in greater detail in the *Statutory and Regulatory History and Reasons for the Proposed Rulemaking*, until 2021 APS systems were funded primarily through a variety of local and State resources. All States now accept Federal funding, including ACL funding, for their APS systems in addition to their State and local funding. However, there are currently no mandatory Federal standards governing APS policies, procedures, and practices, which results in a significant program variation across and within States and, in some cases, sub-standard quality according to APS staff and other community members.

In 2021, ACL fielded a survey (OMB Control No. 0985-0071) of 51 APS systems (the 50 States and the District of Columbia).⁴ Results from that survey, along with an analysis of the

⁴ Adult Protective Services Technical Assistance Resource Center (2023). National Process Evaluation of the Adult Protective Services System. Submitted to the Administration for Community Living, U.S. Department of Health and Human Services. The U.S. Territories are not included in the analysis. Extant policy information was not available from the Territories, thus were not included in the APS Policy Review or APS Systems Outcomes Analysis. They were able to participate in the APS Practice Survey, and their data are included in internal survey results report to ACL.

2020 National Adult Maltreatment Reporting System (NAMRS)⁵ data, and collected policy profiles of APS in all States, the District of Columbia, and the Territories illustrate the wide variability across APS programs.⁶

As discussed in the *Definitions* section, an APS system is made up of both the State entity (e.g., the department of health and human services) that receives State and Federal funding for APS, including ACL funding, and the local APS programs that provide adult protective services.⁷ All APS systems are organized under a State government entity, with 20 systems located within a State Unit on Aging, 14 within a State division or department of social services (mostly responsible for child welfare), and 20 within some other State department or agency of health and human services.⁸ Despite all States having a designated State office for APS, the degree to which the State entity controls and administers the APS systems varies across States. In 78 percent of APS systems, the State office sets program policy for, and conducts oversight of, the APS programs, and in 22 percent of States, the authority to set policy and conduct oversight rests in the local APS program in each county or service area.⁹ In 70 percent of APS programs, State employees implement the APS program and conduct investigations; county and non-profit employees conduct investigations in the remaining 30 percent of programs.¹⁰

⁵ NAMRS is a data reporting system established and operated by ACL for the purpose of better understanding of adult maltreatment in the United States. The data collected is submitted by all APS programs in all states, the District of Columbia, and the Territories. NAMRS annually collects data on APS investigations of abuse, neglect and exploitation of older adults and adults with disabilities, as well as information on the administration of APS programs. The data provide an understanding of key program policies, characteristics of those experiencing and perpetrating maltreatment, information on the types of maltreatment investigated, and information on services to address the maltreatment. For more information, visit: THE ADMIN. FOR CMTY. LIVING, *National Adult Maltreatment Reporting System*, www.namrs.acl.gov (last visited April 18, 2023).

⁶ We refer to “States” in this proposed rule to encompass all fifty States, the District of Columbia, and the five Territories (American Samoa, Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and U.S. Virgin Islands).

⁷ See *infra* note 24. In addition to ACL formula grants, States may receive Title XX Social Services Block Grant (SSBG) funding. However, States have discretion whether and how much of their SSBG funding they choose to allocate to APS. Not all States use SSBG funding for their APS systems.

⁸ See *supra* note 4; Numbers sum to 54 because five Territories did not report data on their APS administrative structure. All fifty States and the District of Columbia reported data. Three States (Massachusetts, Louisiana, and Pennsylvania) have two separate APS systems, one program with eligibility based on age and a separate and distinct program with eligibility based on disability status. The two separate systems were counted in these States.

⁹ See *supra* note 4 at 21.

¹⁰ See *supra* note 4 at 20; Pennsylvania has used a for-profit entity due to a unique circumstance in the State related to the State’s aging services structure. There are currently no for-profit APS entities.

While the State entity establishes APS policy, conducts training, administers funding, and provides information technology infrastructure support to local APS programs in almost all APS systems,¹¹ 27 States have indicated the need for greater consistency in practice.¹² Specific obstacles identified included: lack of resources for oversight in general or quality assurance processes specifically, differing policy interpretations across local programs, and not enough supervisors.¹³

Eligibility for APS services varies dramatically across the States, Tribal Nations, and Territories. States use age and terms such as “disability,” “dependency,” or “vulnerability” to define the populations they serve.¹⁴ In some States, being an older adult (some States set the age at 60 and older, others at 65 and older) is the only criterion for determining whom they serve; in others, eligibility is defined by a combination of age and “disability,” “dependency,” or “vulnerability.” States with programs that serve younger adults (age 18-59 or 18-64) always require “disability,” “dependency,” or “vulnerability” as a criterion.¹⁵ However, despite eligibility being established at the State level, APS programs often triage which eligible cases they have the capacity to investigate based on numerous factors, including resources.

Responsibility for investigations involving residents in congregate residential facilities such as nursing facilities, assisted living facilities, and group homes varies across APS systems. Most APS systems investigate allegations of maltreatment that do not involve the facility or its staff, and a few APS programs investigate allegations involving the staff of the facility.¹⁶ Eleven APS systems report they do not have authority to conduct investigations in congregate residential

¹¹ For example, 76 percent of APS programs indicate that their State exerts “significant” control over local APS operations. *See supra* note 4 at 20.

¹² *See supra* note 4 at 21.

¹³ *Id.*

¹⁴ We note eligibility is set in State statute. Discretion is exercised, however, on which eligible cases to accept – often based on resource constraints.

¹⁵ *See supra* note 4. Specifically, 34 States serve adults (age 18 and older) with disabilities regardless of age. This is the largest eligibility category. Twelve States serve older adults (either age 60 and older or age 65 and older) regardless of disability status, and younger adults with a disability. Four States serve only older adults regardless of disability status. Two States serve only older adults with a disability. Two States have programs that only serve young adults with disabilities, and older adults are served by a different APS program within the State.

¹⁶ *See supra* note 4.

facilities.¹⁷ Forty-two APS systems report they have authority to investigate allegations of abuse, neglect, or exploitation when they occur in congregate residential facilities.¹⁸ Of those 42, 19 report the APS system has authority to conduct investigations in congregate residential facilities in all situations regardless of whether the alleged perpetrator is facility staff, visitor, or resident.¹⁹ Twenty-three States report the APS system has authority to conduct investigations in some congregate residential settings depending on whether a staff person is the alleged perpetrator or not.²⁰

In an effort to elevate uniform evidence-informed practices across APS programs, ACL issued Voluntary Consensus Guidelines for State APS Systems (Consensus Guidelines) in 2016, which were subsequently updated in 2020.²¹ In developing the Consensus Guidelines, ACL applied Office of Management and Budget (OMB) and National Institutes of Standards and Technology (NIST) standards and processes for creating field-developed, consensus-driven guidelines.²² The development of the 2016 Consensus Guidelines and its 2020 update consisted of multiple steps. ACL performed a review of research available on promising practices in APS systems and in other analogous systems throughout the United States; convened a review group consisting of experts selected from the APS, the Long-Term Care Ombudsman, and disability rights communities; and engaged in an extensive and wide-reaching community engagement and outreach process. Through our community engagement process, we received input on an

¹⁷ See *supra* note 4.

¹⁸ See *supra* note 4.

¹⁹ See *supra* note 4.

²⁰ See *supra* note 4.

²¹ For detailed information on the development process for the 2016 and subsequent 2020 Consensus Guidelines, see THE ADMIN. FOR CMTY. LIVING, *Final National Voluntary Guidelines for State Adult Protective Services Systems* (2016), <https://acl.gov/sites/default/files/programs/2017-03/APS-Guidelines-Document-2017.pdf> (last visited May, 16 2023); THE ADMIN. FOR CMTY. LIVING, *Voluntary Consensus Guidelines for State APS Systems* (2020), <https://acl.gov/programs/elder-justice/final-voluntary-consensus-guidelines-state-aps-systems> (last visited Apr. 18, 2023).

²² OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, OMB CIRCULAR A-119, FEDERAL PARTICIPATION IN THE DEVELOPMENT AND USE OF VOLUNTARY CONSENSUS STANDARDS AND IN CONFORMITY ASSESSMENT ACTIVITIES, https://www.nist.gov/system/files/revised_circular_a-119_as_of_01-22-2016.pdf; National Technology Transfer and Advancement Act of 1995, Publ. L. No. 104-113, including amendment Utilization of consensus technical standards by Federal agencies, Publ. L. No. 107-107, § 1115 (2001), <https://www.nist.gov/standardsgov/national-technology-transfer-and-advancement-act-1995>; THE ADMIN. FOR CMTY. LIVING, *Report on the Updates to the Voluntary Consensus Guidelines for APS Systems* (2020) https://acl.gov/sites/default/files/programs/2020-05/ACL-Appendix_3.fin_508.pdf (last visited May 9, 2023).

individual basis from a variety of sources, including the general public, the aging network, APS systems, the disability community, law enforcement, and others. We drafted our guidance based on the individual input we received.²³

The Consensus Guidelines represent recommendations from the field based on experience and expertise serving adults and communities. These guidelines provide a core set of principles and common expectations to encourage consistency in practice, ensure adults are afforded similar protections and APS services regardless of locale, and support interdisciplinary and interagency coordination. These recommendations enhance effective, efficient, and culturally competent APS service delivery. While the Consensus Guidelines have been commended by APS systems and the APS community, they have yet to produce measurable change in APS systems or practice, and consistency and uniformity are still lacking across and within APS systems. Our recently published National Process Evaluation Report using 2021 data and ongoing NAMRS data collection bear out gaps between current State policy and practice and the recommendations contained in the Consensus Guidelines. We have received feedback from the APS community that because the Consensus Guidelines are voluntary recommendations and not regulatory requirements, their efficacy is limited.

These proposed rules are informed by the extensive research, analysis, community input, and recommendations of our Consensus Guidelines, as well as experience and information from our NAMRS data, and the 2021 51 State National Process Evaluation Report.²⁴

II. Statutory and Regulatory History and Reasons for the Proposed Rulemaking

APS programs have historically been administered and primarily funded by States. They have been recognized in Federal law since 1974 when the Social Security Act was amended by the Social Services Amendments of 1974 (Pub. L. 93-647), 42 U.S.C. 1397a(a)(2)(A) to permit States to use Social Services Block Grant (SSBG) funding under Title XX for APS

²³ Individual input was received from the APS community, thus exempting the process from Federal Advisory Council Act requirements; 5 U.S.C. 1001 et. seq.

²⁴ See *supra* note 4.

programming. However, while most States currently use SSBG funding for their APS programs, the amount of SSBG funding allocated to APS varies and the allocations can be very small.²⁵

Through a series of legislative actions, Congress designated ACL as the Federal entity with primary responsibility for providing Federal policy leadership and program oversight for APS. This includes authority granted by the OAA to promulgate regulations, to oversee formula grants to State and Tribal APS programs, to enhance APS programs, to collect data to increase APS effectiveness, and to directly link the authorities of the EJA with those contained in the OAA.

Title VII of the OAA (Vulnerable Elder Rights Protection Activities), enacted in 1992, authorizes funding to States to address protections for vulnerable adults. Some activities are specifically identified to be conducted with Title VII funding. Section 201(e) of the OAA, 42 U.S.C. 3011(e) added in 2006, vests responsibility for a coordinated Federal and national response to elder justice issues broadly with the Assistant Secretary for Aging. ACL has rulemaking authority for elder justice activities by virtue of section 201(e)(3), 42 U.S.C. 3011(e)(3), which states, “the Secretary, acting through the Assistant Secretary, may issue such regulations as may be necessary to carry out this subsection...” and specifically references the responsibility of the Assistant Secretary for elder abuse prevention and services, detection, treatment and response in coordination with heads of State APS programs. Section 2042(b) of the EJA, 42 U.S.C. 1397m-1, establishes an APS grant program under which the Secretary annually awards grants to States. The Secretary of HHS has designated ACL as the grant-making agency for APS. Coupled together, the EJA and OAA provide the Assistant Secretary with broad authority to coordinate, regulate, and fund State APS systems.

²⁵ For example, South Carolina had the highest SSBG expenditure for *Vulnerable and Elderly Adults* in FY 2020 at \$14,311,707 representing 58 percent of their entire block grant. THE DEP’T. OF HEALTH AND HUM. SERVS., SOCIAL SERVICES BLOCK GRANT: FISCAL YEAR 2020. ANN. REP. (2020). https://www.acf.hhs.gov/sites/default/files/documents/ocs/RPT_SSBG_Annual%20Report_FY2020.pdf (last visited May 11, 2023).

Through the enactment of the EJA in 2010, Congress again recognized the need for a more coordinated national elder justice and APS system. The EJA creates a national structure to promote research and technical assistance to support Federal, State, and local elder justice efforts, as well as authorization for dedicated APS funding. A component of the EJA is specifically designed to address the need for better Federal leadership. The Federal Elder Justice Coordinating Council (EJCC) is established by the EJA²⁶ to coordinate activities across the Federal Government that are related to elder abuse, neglect, and exploitation. The EJA designates the Secretary of HHS to chair the EJCC, and continually since the establishment of the EJCC in 2012, the HHS Secretary has designated that responsibility to the Assistant Secretary for Aging and Administrator of ACL. Under the chairmanship of the Assistant Secretary for Aging, and since its establishment, the EJCC has met regularly, soliciting input from the APS community—ranging from individual citizens to expert practitioners and industry associations—on identifying and proposing solutions to the problems surrounding elder abuse, neglect, and financial exploitation, including for strengthening national support for APS.²⁷

Since Fiscal Year (FY) 2015, Congress has appropriated funds to ACL in support of APS through section 2042(a) and 2401(c) of the Elder Justice Act. This funding is used to collect data, disseminate best practices, and provide discretionary elder justice demonstration grants.²⁸ In FY 2021, Congress provided the first dedicated appropriation to implement the Elder Justice Act section 2042(b), 42 U.S.C. 1397m-1(b), formula grants to all States, the District of Columbia, and the Territories to enhance APS, totaling \$188 million, and another \$188 million in FY 2022.²⁹ The recent Consolidated Appropriations Act of 2023 included an annual appropriation of

²⁶ 42 U.S.C. 1397k.

²⁷ THE ADMIN. FOR CMTY. LIVING, *Federal Elder Justice Coordinating Council*, <https://ejcc.acl.gov/> (last visited Apr. 18, 2023).

²⁸ 42 U.S.C. 1397m-1.

²⁹ Coronavirus Response and Relief Supplemental Appropriations Act of 2021, Pub. L. 116-260, 134 Stat. 1182; American Rescue Plan Act of 2021, Pub. L. 117-2, 135 Stat. 4.

\$15 million to ACL to continue providing formula grants to APS programs under the Elder Justice Act section 2042(b), 42 U.S.C. 1397m-1(b).³⁰

On numerous occasions, the APS community has stressed the need for more Federal guidance, leadership, stewardship, resources, and support for State and local APS programs and for victims of adult maltreatment. Advocates have requested greater funding and Federal regulatory guidance for APS systems in their testimony before Congress,³¹ in their statements to the EJCC,³² and in peer-reviewed journals.³³

The GAO conducted three studies on the topic of abuse, neglect, and exploitation between 2010 and 2013 to shed light on the need for Federal leadership. The studies' findings repeatedly recommend a coordinated, Federal response to address the gaps in public awareness, prevention, intervention, coordination, and research of elder maltreatment, as well as a Federal "home" for APS.³⁴

This proposed rule represents the first exercise of ACL's regulatory authority over APS under the OAA and the EJA. While we have issued sub-regulatory guidance, including comprehensive Consensus Guidelines in 2016 and 2020 that include APS evidence-informed practices, we believe it is necessary to codify and clarify a set of mandatory minimum national standards to ensure uniformity across APS programs and to promote high quality service delivery that thus far has not been achieved under the current Consensus Guidelines.

³⁰ Consolidated Appropriations Act, 2023, Pub. L. 117-328. FY 21 and 22 funding was one-time funding to help with start-up costs and infrastructure and the surge of needs during the COVID-19 Public Health Emergency. FY 23 funding was the first ongoing formula grant funding to State grantees.

³¹ *Public and Outside Witness, Hearing Before the Subcomm. on Lab., Health and Hum. Servs. Educ. & Related Agencies of the House Appropriations Comm.*, 113th Cong. (2014) (statement of Kathleen M. Quinn, Exec. Dir. of the Nat'l. Adult Protective Servs. Ass'n.) <https://www.napsa-now.org/wp-content/uploads/2014/03/Appropriations-Testimony-NAPSA.pdf>.

³² *Enhancing Response to Elder Abuse, Neglect, and Exploitation: Elder Justice Coordinating Council, Testimony of William Benson* (Oct. 10, 2012), http://www.aoa.acl.gov/AoA_Programs/Elder_Rights/EJCC/Meetings/2012_10_11.aspx.

³³ Kathleen Quinn & William Benson, *The States' Elder Abuse Victim Services: A System in Search of Support*, 36 GENERATIONS 66 (2012).

³⁴ U.S. Gen. Acct. Off., *GAO-11-208, Elder Justice: Stronger Federal Leadership Could Enhance National Response to Elder Abuse* (2011) <https://www.gao.gov/products/gao-11-208>; U.S. Gen. Acct. Off., *GAO-13-110, Elder Justice: National Strategy Needed to Effectively Combat Elder Financial Exploitation* (2012) <https://www.gao.gov/products/gao-13-110>; U.S. Gen. Acct. Off., *GAO-13-498, Elder Justice: More Federal Coordination and Public Awareness Needed* (2013) <https://www.gao.gov/products/gao-13-498>.

In determining the scope of the APS regulations, we considered modeling our regulations after the child protective services (CPS) regulations administered by the Department's Administration for Children and Families.³⁵ We ultimately rejected this approach. The Child Abuse Prevention and Treatment Act of 1974 (Pub. L. 93-247), 42 U.S.C 5116, provides Federal funding to States for prevention, assessment, investigation, prosecution, and treatment of child abuse and neglect, and awards grants for demonstration projects.³⁶ In FY 2023, approximately \$12 billion was provided for child welfare programs, and of that \$852 million was appropriated specifically for child protection.³⁷ In contrast, the appropriation for activities under section 2042(b) of the EJA was funded for the first time in FY 2021 with one-time funding at \$188 million a year for FYs 2021 and 2022 for State program start-up costs and to address urgent needs related to COVID-19, and \$15 million in ACL's FY 2023 annual appropriation for ongoing operations. Further, the EJA is much smaller in scope both in terms of requirements and discretionary activities. Given the differences in size and scope of Federally authorized and supported activities, ACL believes it would not be appropriate to model the proposed APS regulations after CPS regulations. Moreover, our approach takes into consideration the differences between minor children and adults legally, developmentally, and specifically with regards to rights to make decisions about their lives. ACL invites comment on both the scope and depth of topics proposed for regulatory action and the rationale presented.

Instead of providing detailed and broad requirements like those that apply to CPS, our proposals require the State entity to establish written policies and procedures in areas of significant APS practice. In the interests of transparency, we considered mandating that State

³⁵ Since 2011, ACL has received questions and comments from Congress, OMB, and others regarding comparisons between CPS and APS. For example, GAO made comparisons between APS and CPS in their 2011 report "ELDER JUSTICE - Stronger Federal Leadership Could Help Improve Response to Elder Abuse," (<https://www.gao.gov/assets/gao-11-384t.pdf>) and the Congressional Research Service did a report on this subject as recently as 2020: (<https://crsreports.congress.gov/product/pdf/R/R43707>).

³⁶ Admin. for Child. and Fams., Dep't. of Health and Hum. Servs., *About CAPTA: A Legislative History* (2019) <https://www.childwelfare.gov/pubpdfs/about.pdf>.

³⁷ Emilie Stoltzfus, U.S. Cong. Rsch. Serv. *Child Welfare: Purposes, Federal Programs, and Funding* (2023) <https://crsreports.congress.gov/product/pdf/IF/IF10590>.

entities disclose such policies and procedures (for example, through publication on a State website) except where such disclosure might adversely affect law enforcement efforts, but we ultimately decided to leave such disclosure to State discretion. We welcome comment on the costs and benefits of mandating such disclosure.

Our proposed standards are a minimum floor. States may impose additional requirements on their APS systems above and beyond these proposed minimum Federal standards. ACL invites comment on both the scope and depth of topics proposed for regulatory action and the rationale presented.

III. Adult Protective Services Programs

A. Section 1324.400 Eligibility for Funding

Proposed § 1324.400 clarifies that eligibility for funding is conditioned on compliance with all proposed regulatory provisions. Under the proposed rules, State entities eligible for annual funding from ACL through section 2042 of the EJA, 42 U.S.C. 1397m-1(b) are required to submit a State plan in accordance with § 1324.408 detailing their activities, which ACL proposes to review and approve as a means of verifying compliance with the proposed rule. A State that failed to submit an approvable State plan would no longer be eligible for funding under section 2042(b) of the EJA.

ACL will provide States support and technical assistance in developing an approvable State plan. All States are afforded an opportunity to appeal the Assistant Secretary's disapproval of a State plan submission under proposed § 1324.408(e). If a State declines or fails to qualify for section 2042(b) funding, ACL will redistribute the funds in accordance with the EJA section 2042 formula. Further information on State plan development will be provided in sub-regulatory guidance.

B. Section 1324.401 Definitions

We propose to define the following terms in § 1324.401 to provide clarity on the terms used and referenced in this proposed rule: "Abuse," "Adult," "Adult maltreatment," "Adult

Protective Services (APS), ” “Adult Protective Services (APS) program,” “Adult Protective Services (APS) system,” “Allegation,” “Assistant Secretary for Aging,” “At risk,” “Case,” “Client,” “Conflict of Interest,” “Dual Relationship,” “Emergency Protective Action,” “Exploitation,” “Inconclusive,” “Intake or pre-screening,” “Investigation,” “Mandated Reporter,” “Neglect,” “Perpetrator,” “Post-investigation services,” “Quality assurance,” “Screening,” “Self-neglect,” “Sexual abuse,” “State entity,” “Substantiated,” “Trust Relationship,” “Unsubstantiated,” and “Victim.”

Definitions of note are discussed below.

“*Abuse*” Consistent with definitions in section 102(1) of the OAA, 42 U.S.C. 3002(1), and section 2011 of the EJA, 42 U.S.C. 1397j(1), we propose to define abuse as a component of *adult maltreatment* to encompass the knowing psychological, emotional, and/or physical harm or the knowing deprivation of goods or services necessary to meet essential needs or avoid such harm.

“*Adult*” For purposes of this regulation, we propose to define adult to mean the eligible APS population in any given State. The term “adult” will be used in place of “older adults and adults with disabilities who are eligible for adult protective services.” We have chosen to defer to States’ definitions of “adult” for the purposes of determining eligibility for APS services in recognition of the complex and intersecting nature of social services, public benefits, and behavioral health care services in States. In many States, eligibility for APS services is consistent with eligibility for social services, behavioral health, and other public benefits. A change to eligibility for APS in a State to conform with the proposed rule’s definition of “adult” may potentially disrupt important relationships among programs and services outside APS. We request comments on this approach.

“*Adult maltreatment*” We propose to define adult maltreatment to bring uniformity and specificity to a foundational term used throughout APS systems and this proposed regulation. Although there is increasing consensus on the core components of adult maltreatment, the field

has not adopted a universally accepted definition. The definition of adult maltreatment and its component parts has a direct impact on the reports accepted for investigation, discussed in greater detail below at § 1324.402. Our proposed definition and the requirements set out in § 1324.402(a) that States investigate, at a minimum, the five elements of adult maltreatment will establish a comprehensive and uniform approach to investigations of adult maltreatment while still allowing for State flexibility and discretion. Our definition represents a consistent baseline upon which States may build. In developing our definition and the requirements contained in proposed § 1324.402(a), we adopted categories generally recognized by the field, used by the research community, and in common use by the vast majority of States.³⁸

We propose that adult maltreatment encompass five categories further defined in this Section: abuse, neglect, exploitation, sexual abuse, and self-neglect. Adult maltreatment occurs when there is self-neglect or when a perpetrator commits abuse, neglect, exploitation, or sexual abuse of an adult. The adult must have a relationship of trust with the perpetrator of abuse, neglect, exploitation, or sexual abuse and be at risk of harm from the perpetrator.

This proposed rule, in alignment with most States' policies, limits the definition of abuse or maltreatment to relationships of trust where the alleged victim is at risk of harm from the perpetrator. A relationship of trust includes a caregiving relationship or other familial, social, or professional relationship where a person assumes responsibility for protecting the interests of the adult or where expectations of care or protection arise by law or social convention.³⁹ APS systems refer cases outside trust relationships to partner organizations and services, such as other social service programs or law enforcement. This distinction acknowledges the elevated harm engendered when injury occurs within the context of a relationship of trust and an adult is vulnerable to harm generally and in relation to the perpetrator. It prioritizes finite APS resources to focus on this heightened injury. We further define "trust relationship" and "at risk" later in this

³⁸ See *supra* note 4.

³⁹ The Cntrs. for Disease Control and Prevention, *Elder Abuse Surveillance: Uniform Definitions and Recommended Core Data Elements* (2016) https://www.cdc.gov/violenceprevention/pdf/EA_Book_Revised_2016.pdf.

proposed rule. We recognize that our current proposal narrows the universe of required APS investigations under proposed § 1324.402(a) and in developing our proposal, we considered a more expansive definition of adult maltreatment. We invite comment on our definition and whether it reflects current practice in APS programs and whether it will resolve confusion. We describe some of this confusion throughout this discussion.

“At risk” We propose to define “at risk” in accordance with Centers for Disease Control and Prevention (CDC) Elder Abuse Surveillance: Uniform Definitions and Recommended Core Data Elements (CDC Uniform Definitions) as “the possibility that an individual will experience an event, illness, condition, disease, disorder, injury or other outcome that is adverse or detrimental and undesirable.” We recognize the considerable variation among States in determining whether maltreatment must include “vulnerability” or other qualifier, and we seek comment on this definition. The CDC definition on which ours is based was developed through a collaborative process among a panel of scientists and practitioners representing multiple disciplines (e.g., medicine, psychology, epidemiology, sociology, gerontology), as well as Federal staff.

“Conflict of Interest” means a situation that interferes with a program or program employee or representative’s ability to provide objective information or act in the best interests of the adult. Such a conflict of interest would arise, for example, when an employee, officer, or agent, any member of their immediate family, their partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from their affiliation with an APS system.⁴⁰

“Dual Relationship” means relationships in which an APS worker assumes one or more professional, personal, or volunteer roles in addition to their role as an APS worker at the same time, or sequentially, with a client.

⁴⁰ See 45 CFR 75.321(c)(1).

“Exploitation” Consistent with definitions in section 102 of the OAA, 42 U.S.C. 3002(18)(A), and section 2011 of the EJA, 42 U.S.C. 1397j(8), we propose to define exploitation as a type of *adult maltreatment*. Financial exploitation and exploitation are used interchangeably in the OAA, and exploitation for the purposes of adult maltreatment in this proposed rule is likewise confined to illegal, unauthorized, or improper acts related to the personal finances of an adult (as defined above) (for example, exploitation does not encompass labor rights violations).

“Neglect” Consistent with the definitions in section 102 of the OAA, 42 U.S.C. 3002(38) and section 2011 of the EJA, 42 U.S.C. 1397j(16), we propose to define neglect as the failure of a caregiver or fiduciary to provide the goods or services that are necessary to maintain the health or safety of an adult (as defined above).

“Self-neglect” Consistent with the definitions in section 102(48) of the OAA, 42 U.S.C. 3002(48), and section 2011 of the EJA 42 U.S.C. 1397j(18) we propose to define self-neglect as an adult’s (as defined above) inability to perform essential self-care tasks due to physical or mental impairment or diminished capacity.

“Sexual abuse” The OAA defines “sexual assault” at section 102(50), 42 U.S.C. 3002(50), to have the meaning given in section 2003 of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3796gg–2. Our proposed definition encompasses, but is broader than, sexual assault as defined in the OAA. Consistent with the definition outlined in the CDC Uniform Definitions, we propose to define sexual abuse as the forced and/or unwanted sexual interaction (touching and non-touching acts) of any kind with an adult (as defined above).

“Trust relationship” Consistent with the CDC Uniform Definitions , ACL proposes to define “trust relationship” as “the rational expectation or belief that a relative, friend, caregiver, or other person with whom a [...] relationship exists can or should be relied upon to protect the interests of an adult (as defined above) and/or provide for an adult’s care. This expectation is based on either the willful assumption of responsibility or expectations of care or protection arising from legal or social conventions.” Including the requirement of a trust relationship for

purposes of determining when APS becomes involved furthers consistency of APS interventions in adult maltreatment. Furthermore, most APS systems apply a standard of “trust relationship” in their definition of maltreatment. We seek comments on this approach.

C. Section 1324.402 Program Administration

Proposed § 1324.402(a) requires APS systems to respond to reports of adult maltreatment, which include allegations of abuse, neglect, exploitation, sexual abuse, and self-neglect. Currently, all APS systems are required by State statute to investigate allegations of neglect and physical abuse, and nearly all states investigate allegations of self-neglect, sexual abuse, financial exploitation, and emotional or psychological abuse.⁴¹ Forty-two States investigate six or more types of maltreatment.⁴²

Table C.1: Types of maltreatment investigated by States⁴³

Maltreatment Type	Physical Abuse	Neglect	Exploitation	Sexual Abuse	Self-Neglect	Emotional Abuse
No. of States	54	54	46	52	51	45

However, definitions of these terms vary across States. In certain States, APS programs are not required to respond to certain forms of adult maltreatment. This means that adults are not adequately protected by APS throughout the United States.

In addition to our request for comment on the definition of adult maltreatment, we seek comment as to whether a mandatory requirement for investigation based on the definitions of abuse, neglect, exploitation, sexual abuse, and self-neglect is appropriate, adequately reflects the

⁴¹ See *supra* note 4, at 17. Other maltreatment type categories exist in State statutes, including non-specific exploitation, abandonment, abduction, isolation, other maltreatment, and suspicious death.

⁴² *Id.*

⁴³ The total potential universe for any analysis is 56, however American Samoa and the Commonwealth of the Northern Mariana Islands do not currently have staffed programs. The unit of analysis for this data is 54. This includes APS programs in all States and the District of Columbia. In three States — Louisiana, Massachusetts, and Pennsylvania — APS is provided in two different programs for older adults and younger adults.

needs and experiences of APS systems, as well as any potential State and local burden associated with such a requirement.

Proposed § 1324.402(a) also requires the State entity to adopt certain policies and procedures for receiving and responding to reports of adult maltreatment. These policies and procedures must be person-directed and rely on concepts of least restrictive alternatives. Principles of person-directedness respect the integrity and authority of adults to make their own life choices. They promote APS clients' concepts of what safety and quality of life mean, and success and positive outcomes are defined by the client, not the APS worker. This provision sets minimum requirements for States as they establish or revise policies and procedures while still leaving flexibility to best meet their unique needs.

The State entity must create precise, standardized criteria for determining or assessing eligibility for APS services. States must also create clear and specific parameters of the settings, locations, and types of alleged perpetrators for which allegations of maltreatment will be investigated by their APS system. For example, States vary on whether they conduct investigations in congregate residential settings. In addition, States must establish processes to ensure the parameters are implemented consistently across APS programs in their State.

We propose that States define processes for receiving, screening, prioritizing, and referring cases based on risk and the nature of the adult maltreatment in a uniform and consistent manner across their State. Under this proposal, the State entity would be required to establish policies and procedures to manage a tiered risk-based assessment system, differentiating response requirements for cases that represent immediate and non-immediate risks. As proposed, immediate risk would be assessed via the likelihood of death, irreparable harm, or significant loss of income, assets, or resources. Responses should occur no later than 24 calendar hours (one calendar day) after receiving the report for cases representing an immediate risk, and no later than seven calendar days for cases of non-immediate risk.

Currently, there is data on all but one APS systems' tiered report response procedures. Two State APS systems have no priority levels, and one has two priority levels. The rest have three or more. States vary widely in their response time and not all States address high priority cases within 24 hours, although most do.⁴⁴ We seek to bring all States into alignment with the Consensus Guideline in this area of practice; timely response to immediate need cases is essential to the health and safety of potential maltreatment victims.

For allegations of adult maltreatment outside APS jurisdiction, we propose the State entity establish appropriate referral mechanisms and information and data sharing agreements with the state and/or local entity with jurisdiction to investigate.

In proposed § 1324.402(b), we require State entities to establish policies and procedures to inform potential APS clients of their rights at first contact with client. With this provision, we seek to address concerns that APS programs do not regularly inform potential clients of their rights under existing State laws, including confidentiality and privacy requirements, the right to refuse services, and the right to refrain from speaking with APS. This is directly responsive to problems that have been reported by the APS and disability and aging community advocates to ACL in listening sessions and other community engagement activities. Failure to inform potential clients of their rights undermines trust between individuals and APS and may alienate communities. Under this proposal, APS programs must inform potential APS clients of their rights in the format and language preferred by the individual, including those with limited English proficiency and individuals with disabilities. APS programs should take appropriate steps to ensure communication with individuals with disabilities are as effective as communications with others. More generally, standard plain language practice is to write informational materials at or near a fourth grade reading level and not to exceed an eighth grade reading level. We expect State entities to meet these standards in complying with language proposed at § 1324.402(b).

⁴⁴ See *supra* note 4.

Proposed § 1324.402(d) requires the State entity to establish policies and procedures for the staffing of APS systems. We propose to require States to establish a minimum staff to client ratio appropriate to the circumstances in the State. We believe, consistent with the literature, that fixed staff to client ratios in APS systems will improve health and safety outcomes for adult victims of maltreatment.⁴⁵ We also believe that establishing fixed staff to client ratios will improve the long-term continuity of APS programs. We request comment on whether staff to client ratios are feasible for APS programs and whether required workload studies would assist in development of appropriate ratios.

We also propose to require mandatory APS training as a part of implementing the proposed policies and procedures. Findings from a 2015-2018 survey completed by 49 APS offices found that half of programs were not training on core competencies while two had no training whatsoever.⁴⁶ Training and ongoing education increases staff knowledge, leading to increased rates of investigation and substantiation.⁴⁷ Supervisors provide both clinical and administrative oversight, approve key casework decisions, and guide the caseworkers in overall case management. Sufficient training is critical to ensuring they can perform these functions.

D. Section 1324.403 Investigation and Post-Investigation Services

Proposed § 1324.403 requires the State entity to develop and implement a standardized set of policies and procedures for essential APS functions throughout the lifecycle of a case. The purpose of an APS investigation is to collect information about the allegations of maltreatment, determine if the alleged victim is eligible for APS services, assess the immediate risk of the

⁴⁵ Jane E. Ball et. al., *Post-operative Mortality, Missed Care and Nurse Staffing in Nine Countries: A Cross-Sectional Study*, 78, INT. J. NURSING STUDIES, 10 (Feb. 2018) <https://pubmed.ncbi.nlm.nih.gov/28844649/>; Charlene Harrington et. al. *Appropriate Nurse Staffing Levels for U.S. Nursing Homes*, 13 HEALTH SERV. INSIGHTS (2020) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7328494/>.

⁴⁶ Pi-Ju Liua & Leslie Ross, *Adult Protective Services Training: A Brief Report on the State of the Nation*, 33 J. OF ELDER ABUSE AND NEGLECT, 82 (2021).

<https://www.tandfonline.com/doi/epdf/10.1080/08946566.2020.1845271?needAccess=true&role=button>

⁴⁷ Kelli Connell-Carrick & Maria Scannapieco, *Adult Protective Services: State of the Workforce and Worker Development*, 29(2) GERONTOLOGY & GERIATRICS EDUCATION, 189-206 (2008) <https://pubmed.ncbi.nlm.nih.gov/19042235/>.

situation, conduct an investigation, and ultimately make a finding as to the presence or absence of adult maltreatment. If adult maltreatment is present, APS then identifies the service needs of the client and develops a plan, including recommendations or referrals to other entities, such as social services. Many, but not all, APS systems also follow cases post-investigation. If it is found the individual seeking APS services is ineligible, the APS program may develop referrals to appropriate services.

Proposed § 1324.403 sets forth requirements for the development of standardized, specific policies and procedures governing an APS investigation from initiation to post-investigation services. Initiation of the investigation encompasses screening and triaging reports as well as decision-making processes for determining immediate safety and risk factors affecting the adult. The investigation itself includes the collection of relevant information and evidence. Policies and procedures must also detail methods to make determinations on allegations and record case findings, including consultation with outside experts when appropriate. Professional fields for such experts include: medicine, social work, behavioral health, finance/accounting, and long-term care. We likewise propose the APS worker provide referrals to other agencies and programs, as appropriate under State law, such as referrals to Area Agencies on Aging (AAAs), State Medicaid programs, or Centers for Independent Living for services. For example, the APS program may make a referral to the State Medicaid agency for home and community-based services to mitigate harm and assist the victim in recovery from the abuse. During the course of an investigation, APS may in limited circumstances take emergency protective action, which we propose to define in § 1324.401. Such action should be person-directed and taken as a last resort after exploring all other viable options, prioritizing community integration, autonomy, and individual choice. This proposed section also requires the APS investigator or supervisor to communicate results of the investigation to the client.

Post-investigation services are provided through a variety of mechanisms and funding sources. APS staff may provide services directly (e.g., assistance with housing relocation),

purchase them (e.g., pay for medications or utility bills), or make referrals to community-based services (e.g., home-delivered meals). Our proposals provide a framework for the provision of post-investigation services that promote the dignity and autonomy of the client, leverage community resources, and aim to prevent future adult maltreatment.

Proposed § 1324.403 draws heavily from the Consensus Guidelines.⁴⁸ We seek comment on whether this approach includes all necessary activities for investigation and post-investigation services as well as examples of investigation and post-investigation services we have not proposed for inclusion.

E. Section 1324.404 Conflict of Interest

Proposed § 1324.404 requires the State entity to establish policies and procedures to prevent, recognize, and promptly addresses both real and perceived conflicts of interest at the organizational and individual level. Trust in APS by individuals receiving services and the broader community is essential to the ability of APS programs to effectively perform their functions. APS programs form partnerships and referral relationships with allied organizations and professionals to provide necessary services and supports to victims of adult maltreatment before, during, and after intake and investigation. Conflicts of interest may arise when a State employee, APS worker, or APS system's financial or personal interests influence, or are at odds with, the interests of a client or cohort of clients.

Many APS programs that provide services for victims of adult maltreatment have close relationships and shared locations and data systems with AAAs, State Units on Aging (SUAs), and other health and human services agencies.⁴⁹ Without appropriate conflict of interest safeguards, familiarity and ease of referral arising from proximity and shared data systems may create incentives for APS to refer clients to the AAA or SUA over another more appropriate service provider.

⁴⁸ See *supra* note 22.

⁴⁹ See *supra* note 4, at 4. State Units on Aging house APS in 20 States. Other State health and human services agencies (not SUAs or Child Welfare) house APS in 20 States.

Individual APS workers may face conflicts of interest if they are in a “dual relationship” serving multiple roles for a single client. For example, an individual who serves as both an APS worker and a long-term services and supports options counselor for the same client may be unable to make objective findings of adult maltreatment in a case where a caregiver is an alleged perpetrator of adult maltreatment against the client. The individual serving as APS worker and options counselor may, in their role as APS worker, choose not to substantiate findings of adult maltreatment against the caregiver because, as an options counselor, they know the client chooses the alleged perpetrator as their caregiver. We propose these dual relationships be permitted only when unavoidable and that conflicts of interest be appropriately mitigated.

We further propose that APS programs have policies and procedures that ensure conflicts of interests are avoided and, if found, remedied. These procedures could include firewalls and disclosure requirements. We seek comment on whether our proposal reflects the universe of actual and potential conflicts of interest, those who may be a party to a conflict, and ways in which we may strengthen these requirements while not placing undue programmatic or administrative burden on APS systems.

F. Section 1324.405 Accepting Reports

Proposed § 1324.405 requires the State entity to have policies and procedures for accepting reports of adult maltreatment. We propose such policies and procedures require prompt receipt of reports of alleged maltreatment, including multiple methods for receiving reports 24 hours a day, 7 calendar days a week in manners that are fully accessible (e.g., using augmentative communication devices or translation services). Currently 29 programs meet the Consensus Guidelines recommendation to be available 24/7 for intake of new reports.⁵⁰ Receiving reports 24 hours a day 7 calendar days a week is paramount to the safety of victims and potential maltreatment victims. For this reason, we propose a specific timeframe for receiving reports consistent with our recommendations in the Consensus Guidelines. In the

⁵⁰ See *supra* note 4, at 30.

interests of accessibility, we considered mandating that APS systems establish an online reporting mechanism (for example, accepting reports of adult maltreatment through a website), but we ultimately decided to leave such operational details to State discretion. We welcome comment on the costs and benefits of mandating such an online reporting mechanism.

APS receives reports from both the general public and individuals mandated by the State to report suspected adult maltreatment. Mandatory reporting is an essential tool in combating adult maltreatment; 49 States currently have mandatory reporting statutes.⁵¹ In one study, researchers found that reports made by mandatory reporters to APS were more likely to be substantiated and less likely to result in service refusal than reports made by non-mandated reporters.⁵² However, most APS programs are not required to contact mandatory reporters with information about the case after a report is made. Mandatory reporters have stated that the absence of a reporting feedback loop creates a disincentive for reporting.⁵³ The most common complaint ACL receives from community providers that work with APS is that while they may be required under State law to report, they do not receive information back on the status of their report. We propose mandatory reporters be provided information on the status of a report consistent with State confidentiality laws. In the interests of accountability, we considered mandating that States provide such status information to such mandatory reporters within a certain timeframe (for example, within 30 calendar days of the report), but we ultimately decided to leave such operational details to State discretion. We welcome comment on the costs and benefits of mandating such a mandatory response timeframe. Additionally, we invite comment on the type of information that might be returned to mandatory reporters after a report of

⁵¹See *supra* note 4.

⁵² Kristin Elizabeth Lees, (2018) Elder Mistreatment: An examination of formal and informal responses to a growing public health concern (Mar. 23, 2018) (Ph.D. dissertation, Northeastern University) <https://repository.library.northeastern.edu/files/neu:cj82r9210/fulltext.pdf>.

⁵³ Olanike Ojelabi et al., *Closing the Loop: An Environmental Scan of APS-Reporter Feedback Policies and Practices*, 5(1) INNOVATION IN AGING 931 (2021) <https://doi.org/10.1093/geroni/igab046.3370>; S. Jackson, *Adult Protective services and victim services: A review of the literature to increase understanding between these two fields*, 34 AGGRESSION & VIOLENT BEHAVIOR 214 (2017) <https://www.semanticscholar.org/paper/Adult-protective-services-and-victim-services%3A-A-of-Jackson/15e2bbf7e180170443f67e90ae1acfc50ffbdb8a>; Marguerite DeLiema et al., *Voices from the Frontlines: Examining Elder Abuse from Multiple Professional Perspectives*, 40 HEALTH & SOCIAL WORK e15 (2015) <https://doi.org/10.1093/hsw/hlv012>.

maltreatment is submitted to an APS program, including potential administrative burdens to APS programs and client confidentiality and privacy conflicts that may arise from such requirements.

G. Section 1324.406 Coordination with Other Entities

Proposed § 1324.406(a) requires the State APS system to coordinate with other State and local governmental agencies, community-based organizations, and other entities engaged in activities to promote the health and wellbeing of older people and adults with disabilities for the purposes of addressing the needs of the adult experiencing the maltreatment. These entities include, but are not limited to, the Long-Term Care Ombudsman, State offices that handle scams and frauds, State and local law enforcement, State Medicaid agencies and other State agencies responsible for home and community-based services (HCBS) programs, and financial services providers. Such coordination maximizes the resources of APS systems, improves investigation capacity, and ensures post-investigation services are effective. We have chosen to require States coordinate with these specific entities to ensure coordination with critical partners in the investigation of abuse, neglect, and exploitation. Various non-APS entities have authority to investigate maltreatment based on who the victim and perpetrator of the maltreatment are, and where the maltreatment took place. An effective, holistic response to adult maltreatment must include all enumerated entities working in coordination with APS. Currently, the research suggests this is not taking place.⁵⁴ We seek comment as to whether we have accurately captured the scope of appropriate entities with which APS should collaborate, and whether our proposal would create unintended consequences for APS programs. We also seek examples of where coordination is working and where barriers to coordination exist.

Proposed § 1324.406(b) requires the State APS system to develop policies and procedures to address coordination and information sharing with several governmental and private entities both within a State and across State lines for the purpose of carrying out

⁵⁴ Health and Human Serv. Off. of the Insp. Gen. *Incidents of Potential Abuse and Neglect at Skilled Nursing Facilities Were Not Always Reported and Investigated* (2008) <https://oig.hhs.gov/oas/reports/region1/11600509.pdf>.

investigations. Coordination could include development of memoranda of understanding (e.g., for referrals and information sharing), establishment of multi-disciplinary teams across and among governmental and non-governmental entities (with appropriate safeguards for confidentiality to protect client privacy and the integrity of APS investigations), and collaboration regarding training and best practices. We recognize that State laws may preclude sharing of certain information related to individual investigations, but we believe that all APS systems at a minimum can work with other entities around prevention and best practices to address adult maltreatment.

State authority to investigate alleged maltreatment of adults resides in different entities. Therefore, it is imperative to have a clear understanding of which entities are responsible for which types of investigations. Which entity is responsible for an investigation will depend upon various factors including: the location or setting of the maltreatment; the category of adult maltreatment; the relationship between an alleged perpetrator and an alleged victim; and the characteristics of the alleged victim. To help resolve confusion within States, we propose in § 1324.406(b) that the APS programs develop and implement information and data sharing agreements to ensure coordination of investigations and that appropriate referrals are made when APS receives a report that is outside their jurisdiction to investigate, including with law enforcement, the State Medicaid office, and State licensing and certification agencies. Coordination between entities reduces the imposition of multiple investigations on adults who have been harmed and helps prevent future maltreatment. Such agreements will allow one program to share with the other information about alleged maltreatment by someone who works with, or who has a relationship of trust with, individuals being served by both organizations. Additionally, such agreements will allow the sharing of information between these entities on the outcome of individual investigations, as permissible under State law. For example, this could include communication of the results to State Medicaid agencies in instances in which a

Medicaid provider or direct care worker is determined by APS to be a perpetrator of the maltreatment. We seek comment on our proposals.

We also believe it is critical to address coordination across States given that perpetrators may move a victim to another jurisdiction or may move to another jurisdiction themselves where they engage in the same practices investigated in the first State. We request comments and examples of best practices on how coordination and collaboration with other States and local jurisdictions may be effectively achieved, minimizing administrative burden.

H. Section 1324.407 APS Program Performance

Proposed §1324.407 requires the APS State entity to collect and report aggregated data annually to ACL.⁵⁵ We anticipate data elements to be similar to those already reported voluntarily by most States through the NAMRS system. However, because NAMRS data submission is voluntary, the completeness of the data varies widely and therefore limits our ability to understand incidence of adult maltreatment within and across States. We will provide future guidance on data elements to be collected and seek comment on what these data elements should be.

We also propose that the State entity develop policies and procedures regarding the maintenance of individual APS case data. We propose that APS systems keep the individual data set for at least five years. We believe five years is an appropriate timeframe to allow APS programs to assess clients across time to determine whether repeated abuse or recidivism is occurring, providing APS knowledge critical to prevent future instances of maltreatment. In developing our proposal, we considered a requirement of ten years; while a longer timeframe would improve data accuracy, it would increase burden for States. We seek comment on whether five years is an appropriate timeframe or whether a greater or lesser duration is optimal.

I. Section 1324.408 State Plans

⁵⁵ Elder Justice Act sections 2042, 2042(b)(4), 42 U.S.C. 1397m-1(a)(1)(B), 1397m-1(b)(4); Older Americans Act of 1965 section 201(e)(2)(A)(ii)(I), 42 U.S.C. 3011.

Proposed § 1324.407 requires each APS State entity to develop a State plan consistent with 45 CFR 75.206(d) and requirements set forth in the EJA and by the Assistant Secretary for Aging.⁵⁶ State plans will allow States to document the tangible outcomes planned and achieved as a result of the funding they receive from ACL. Funding provided to State APS entities through the Elder Justice Act is contingent on compliance with our proposed regulations. The State plan is the mechanism through which States demonstrate, and ACL evaluates, this compliance.

State plans also can be used to translate activities, data, and outcomes into proven best practices, which can be used to leverage additional resources. State plans promote coordination and collaboration to better serve the people of a State by providing a blueprint that describes what the State will undertake to meet the needs of the population it serves. The State plan should be developed in conjunction with the APS programs and with input from interested parties and updated at least every five years or as frequently as every three years at State option..

ACL has administrative oversight responsibility with respect to the expenditures of Federal funds pursuant to the EJA. As a condition of approval and receipt of Federal funding, APS systems must include assurances in their State plans that they will develop and adhere to policies and procedures as defined by these regulations. ACL will provide technical assistance to States regarding the preparation of State plans and are responsible for reviewing those that are submitted for compliance. Annual State program performance data collected and submitted to ACL pursuant to §1324.407 will be used to measure performance and assess the extent to which State systems are meeting State plan objectives.

State plans will be reviewed and approved by the Director of the Office for Elder Justice and Adult Protective Services (OEJAPS), the position designated by Sec. 201(e)(1) of the OAA,

⁵⁶ 45 CFR 75.206(d) allows for State plans vs. applications for funding, thereby reducing burden. The Older Americans Act of 1965 section 201(1)(e)(A)(ii), 201(1)(e)(A)(iv)-(B), 42 U.S.C. 3011(e)(1)(A)(ii), 3011(e)(1)(A)(iv) and 42 U.S.C. 3011(e)(1)(B) directs the Assistant Secretary for Aging to collect data and information, and strategic plans from States. The Elder Justice Act section 2042(b)(4), 42 U.S.C. 1397m-1(b)(4) authorizes State reports from each entity receiving funding.

42 U.S.C. 3011(e)(1). A State entity dissatisfied with the Director of OEJAPS' final determination may appeal to the Deputy Assistant Secretary for review not later than 30 calendar days after the date of the determination. The State entity will then be afforded an opportunity for a hearing before the Deputy Assistant Secretary. If State disagrees with the determination of the Deputy Assistant Secretary, it may appeal to the Assistant Secretary not later than 30 calendar days after the date of the Deputy Assistant Secretary's decision.

We seek comment on our proposals for the development of State plans as well as ACL oversight and monitoring of State plan objectives.

J. Regulatory Approach

The proposed regulations seek to bring States into alignment with evidence-informed practices while recognizing that States should have the flexibility and discretion to tailor policies and procedures to their circumstances. In general, we have provided broad guidelines for the required policies and procedures but leave States to fill in the details and set their own standards as they develop new, or amend current, policies and procedures. In several areas, we have taken a more proscriptive approach to establish a uniform national baseline. Where we have been more directive, we have done so because we believe it is critical to the safety of maltreatment victims or potential victims, is foundational to the functioning of an APS system, or because the APS community has requested granular policy direction. These proscriptive requirements have been drawn from the evidence-informed Consensus Guidelines and represent promising practices for APS service delivery. We invite comment as to whether we have struck the appropriate balance between setting a proscriptive minimum floor for essential policies and procedures and leaving general implementation of the policies and procedures to State discretion.

K. Effective Date

We propose an effective date for these provisions of three years from date of issuance of the final rule.

L. Request for Comment

ACL seeks comment on all issues raised by this proposed regulation as detailed above.

IV. Required Regulatory Analyses

A. Preliminary Regulatory Impact Analysis (Executive Orders 12866 and 13563)

1. Introduction

We have examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601-612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

Under Executive Order 12866, “significant” regulatory actions are subject to review by the Office of Management and Budget (OMB). As amended by Executive Order 14094 entitled “Modernizing Regulatory Review” section 3(f) of the Executive order defines a “significant regulatory action” as any regulatory action that is likely to result in a rule that may:

(1) have an annual effect on the economy of \$200 million or more (adjusted every 3 years by the Administrator of the Office of Information and Regulatory Affairs (OIRA) for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, Territorial, or Tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in this Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

It has been determined that this proposed rule is significant. Therefore, OMB has reviewed this proposed rule.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing “any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year.” The current threshold after adjustment for inflation is \$177 million, using the most current (2022) Implicit Price Deflator for the Gross Domestic Product. This proposed rule would not result in impacts that exceed this threshold.

Summary of Costs and Benefits

Compared to the baseline scenario wherein APS systems continue to operate under State law with no Federal regulation, we identify several impacts of this proposed rule. We anticipate that the proposed rule will: require the revision of State policies and procedures, require training on new rules for APS staff, require the submission of new State plans, require data sharing agreements between APS systems and other State entities, require APS systems create a feedback loop to provide information to mandatory reporters, require data reporting to ACL, inform potential APS clients of their rights under State law, and require new or updated record retention systems for certain States. We anticipate that the final rule will result in improved consistency in implementation of APS systems within and across States, clarity of obligations associated with Federal funding for administrators of APS systems, and will result in better and more effective service delivery within and across States with better quality investigations in turn leading to more person-directed outcomes.

This analysis describes costs associated with issuing APS regulations and quantifies several categories of costs to grantees (State entities) and sub-grantees (APS programs), collectively referred to as APS systems, and to ACL under the proposed rule. Specifically, we quantify costs associated with APS systems (1) revising policies and procedures, (2) conducting trainings, (3) implementing policies and procedures (3) reporting data to ACL (4) maintaining records retention system (5) developing State plans. The proposed effective date of this rulemaking is three years from the date of final publication. This is to allow for variation in the timing of State legislative sessions. We anticipate that all States will have fully implemented the rule by its effective date and impacts will be measurable by that time. We conclude the proposed rule would result in a cost of \$3,532,916.99 to fully implement. This cost will be offset by improved investigations and better outcomes for the victims of adult maltreatment. This represents significant value, particularly given the widespread and egregious nature of adult maltreatment in the United States.

The analysis also includes a discussion of the potential benefits under the rule that we do not quantify. We request comments on our estimates of the cost and benefits of this proposed rule, including the impacts that are may not be quantified in this analysis.

A detailed discussion of costs and benefits associated with the rulemaking follows.

a. Costs of the Proposed Rule

1. Revising Policies and Procedures

This analysis anticipates that the proposed rule would result in one-time costs to State entities and APS programs to revise policies and procedures. The majority of APS systems currently maintain policies and procedures, often based on State statute. Data from our National Process Evaluation Report of Adult Protective Services (OMB Control Number 0985–0054) and State experiences incorporating concepts from the Consensus Guidelines suggest our proposed rules will establish a minimum standard that may reflect current practice in many States. For example, while all States currently require a screening process for intake, there is no uniformity

or standardization in this process across or within States and detail contained in policies and procedures (if present) varies. Therefore, in requiring standard policies and procedures for APS systems, ACL anticipates that all APS programs may create new or revise their current policies and procedures under the proposed rule; however, the level of revision will vary by State. There is currently no data on the total number of APS programs. Our estimates reflect our understanding of the structure of State APS systems and the assumption that there is one program per county in local-level systems, totaling 928 APS programs nationwide.⁵⁷

We estimate that roughly half of these entities will require more extensive revisions, with the rest requiring limited revisions to their current policies and procedures. We estimate that programs with more extensive revisions will spend twenty (20) total hours on revisions per entity. Of these, fifteen (15) would be spent by a mid-level manager equivalent to a first-line supervisor (Occupation code 43-1011), at a cost of \$30.47 unadjusted hourly wage, \$60.94 per hour adjusted for non-wage benefits and indirect costs (15 x \$60.94), while an average of five (5) hours would be spent by executive staff equivalent to a general and operations manager (Occupation code 11-1021), at a cost of \$55.41 per hour unadjusted hourly wage, \$110.82 per hour adjusted for non-wage benefits and indirect costs (5 x \$110.82).⁵⁸ For programs with less extensive revisions, we assume fifteen (15) total hours spent on revisions per entity. Of these, ten (10) hours would be spent by a mid-level manager equivalent to a first-line supervisor (Occupation code 43-1011), at a cost of \$30.47 per hour unadjusted hourly wage, \$60.94 per hour adjusted for non-wage benefits and indirect costs (10 x \$60.94), while an average of five (5) hours would be spent by executive staff equivalent to a general and operations manager

⁵⁷ The structure and administration of APS in the United States is variable and we lack data on the number of local APS programs. Some States have a single entity that controls and administers the program, others have a State entity and local programs. There is a staffed APS office in every State government, the District of Columbia and three Territories which receives ACL grant funding. Fifteen States have local level APS programs, the others are State-administered and have a single APS entity for the entire State. We have used counties as a proxy for the 15 with local programs.

⁵⁸ Wages are multiplied by a factor of 2 for non-wage benefits and indirect costs.

(Occupation code 11-1021), at a cost of \$55.41 unadjusted hourly wage, \$110.82 adjusted for non-wage benefits and indirect costs (5 x \$110.82).

We monetize the time that would be spent by APS programs on revising policies and procedures by estimating a total cost per entity of \$1,468.02 or \$1,163.50, depending on the extent of the revisions. For the approximately 464 programs with less extensive revisions, we estimate a cost of approximately \$539,864. For the 464 programs with more extensive revisions, we estimate a cost of approximately \$681,244.80.²⁸ We estimate the total cost associated with revisions with respect to the proposed rule for APS systems of \$1,221,108.80.

The above estimates of time and number of State entities or APS programs that would revise their policies under the regulation are approximate estimates based on ACL's extensive experience working with APS systems, including providing technical assistance, and feedback and inquiries that we have received from State entities and APS programs. Due to variation in the types and sizes of State entities and incomplete data on local programs, the above estimates of time and number of entities that would revise their policies under the regulation is difficult to calculate precisely.

2. Trainings on new requirements

Cost to conduct trainings (ACL staff and contractors): ACL estimates that the Federal Government will incur a one-time expense with respect to training or re-training State entities under the proposed rule.

Senior ACL staff will train State entities by the ten (10) HHS regions assisted by its technical assistance provider the APS Technical Assistance Resource Center (TARC). We assume for each of the ten (10) regions that trainings will take three (3) hours of staff time for one Federal GS-14 equivalent⁵⁹ at a cost of \$63.64 unadjusted hourly wage, \$127.28 adjusted for non-wage benefits and indirect costs (3 x \$127.28), three (3) hours of staff time for one GS-13 equivalent at a cost

⁵⁹ Represents adjusted Federal salary in DC-VA-MD area, <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2023/DCB.pdf>.

of \$53.85 per unadjusted hourly wage, \$107.70 per hour adjusted for non-wage benefits and indirect costs (3 x \$107.70), and (3) and three hours of staff time for five (5) contractors equivalent to training and development managers (U.S. Department of Labor (DOL) Bureau of Labor Statistics (BLS) Occupation code 11-3131) at a cost of \$61.92 per hour unadjusted for non-wage benefits, \$123.84 per hour adjusted for non-wage benefits and indirect costs (3 x 5 x \$123.84). This is inclusive of time to prepare and conduct the trainings.

We monetize the time spent by Federal employees and contractors to prepare and conduct trainings for State entities by estimating a total cost per regional training of \$2,562.54. For ten trainings a total of \$25,625.40.

Cost to conduct training (State entity to local APS program): We further anticipate in each of the 15 local-level systems the State entity would incur a one-time expense to conduct a training on the new policies and procedures for the State's local APS programs. For each State entity to prepare and conduct a training (15 trainings total) we anticipate two (2) employees per State entity each equivalent to a first-line supervisor (BLS Occupation code 43-1011), would spend two (2) total hours (one (1) hour per employee) at a cost of \$30.47 per hour unadjusted hourly wage, \$60.94 per hour adjusting for non-wage benefits and indirect costs (2 x \$60.94).

We monetize the time spent by State entities to prepare and conduct trainings for local APS programs at \$121.88 per training. For 15 State entities we anticipate a total of \$1,828.20.

Cost to conduct training (APS programs to APS workers): We anticipate each of the 928 local APS programs will incur a one-time expense to conduct a training for APS workers on new policies and procedures. For each program to prepare and conduct a training we anticipate three (3) hours to prepare and conduct a training of one mid-level manager equivalent to a first-line supervisor (BLS Occupation code 43- 1011), at a cost of \$30.47 per hour unadjusted hourly wage, \$60.94 after adjusting for non-wage benefits and indirect costs (3 x \$60.94). We monetize the time spent by APS programs to prepare and conduct trainings at \$182.82 (928 x \$182.82). We monetize the time spent by APS programs to train their workers at \$169,656.96.

Cost to receive training: There is no data on individual local APS program staffing. However, NAMRS does track an aggregate number of APS staff at the State and local level, from State supervisors to local APS workers: 8,287. We assume 5 percent of these workers are executive staff equivalent to a general and operations manager (BLS Occupation code 11-1021), at a cost of \$55.41 unadjusted hourly wage, \$110.82 per hour adjusted for non-wage benefits and indirect costs ($414 \times \$110.82$), 15 percent are first-line supervisor (Occupation code 43-1011), at a cost of \$60.94 per hour adjusting for non-wage benefits and indirect costs ($1,243 \times \$60.94$) and 80 percent are Social and Human Service Assistants (Occupation code 21-1093) at a cost of \$19.45 per hour unadjusted hourly wage, and \$38.90 adjusted for non-wage benefits and indirect costs. ($6,629 \times \$38.90$).

We monetize the time spent by APS staff to receive a one-hour training at \$379,496.

We monetize the total amount of time spent to give and receive trainings at \$576,606.56. Of this, \$550,981.16 is State expense and \$25,625.40 is Federal expense.

3. Implementing new policies and procedures

The proposed rule requires several changes in APS practice which may represent a cost to States.

Cost to implement a two-tiered, immediate vs. non immediate risk, response system:

Forty-nine States currently have a two-tiered (or higher) system. Forty-nine States currently respond to immediate need intakes within 24 hours. After consulting former APS administrators, we have determined that we cannot fully quantify how much it would cost a State to develop and implement a new two-tiered system. However, given that most States currently already maintain such a system, we anticipate it would be a very minor on-going cost in total.

Cost to implement mandatory staff to client ratios: The provision requiring States to establish a minimum staffing ratio is intended to better enable States to ensure long-term continuity of programs. We anticipate that this will be an on-going, cost neutral provision; States have the discretion to set minimum staffing ratios consistent with current practice, and therefore

currently available resources. We do not anticipate that States would commit to increasing staffing ratios without a commensurate increase in Federal or other funding. Consequently, we anticipate that this provision will not result in increased cost to APS programs. We invite comment as to whether our analysis of the potential financial burden of this proposal is accurate.

Cost to implement a mandatory reporter feedback loop: According to 2021 ACL Evaluation survey and NAMRS data, of all reports nationally which resulted in an investigation, 255,395 (59 percent) were made by professionals. However, not all professionals are mandated reporters and who is a mandated reporter varies by State. For example, a home and community-based service provider or other social service provider would be considered a professional but may not be a mandated reporter. For this reason, we assume 75 percent of reports resulting in an investigation made by professionals were made by mandated reporters (191,546). One such response an APS program could make to a mandated reporter is to send an email. If for each report leading to an investigation received by a mandatory reporter, an APS program sends an email in response, we anticipate a Social and Human Service Assistants (Occupation code 21-1093) at a cost of \$19.45 per hour unadjusted hourly wage, and \$38.90 adjusted for non-wage benefits and indirect costs would spend ten (10) minutes sending the email. We monetize the ongoing cost for all 56 systems to send an email for each report of maltreatment from a mandatory reporter to be \$1,241,856.57 annually.

81 percent APS programs do not currently require a feedback loop for mandatory reporters.⁶⁰ To bring all States into compliance (.81 x \$1,241,856.57) with the proposed rules would amount to \$1,005,903.82 annually.

Cost to implement data sharing agreements: Anecdotally we know very few States currently have data sharing agreements with other maltreatment investigatory entities in place. We have estimated 50 APS systems currently have no data use agreements in place while six may have one or more. For illustrative purposes we assume each State without a data sharing

⁶⁰ See *supra* note 53.

agreement will establish three (3) MOUs (with, for example, the Medicaid agency, the Long-term care ombudsman, and the Protection and Advocacy System). Each MOU will take one mid-level manager equivalent to a first-line supervisor (Occupation code 43- 1011), at a cost of \$30.47 per hour unadjusted hourly wage, \$60.94 after adjusting for non-wage benefits and indirect costs three (3) hours to draft (3 x \$60.94). It will take a privacy officer equivalent to a lawyer (Occupation code 23-1011) at a cost of \$78.74 unadjusted hourly wage, \$156.80 per hour adjusted for non-wage benefits and indirect costs one (1) hour to review and approve (1 x \$156.80). It will take an executive staff equivalent to a general and operations manager (Occupation code 11-1021), at a cost of \$55.41 unadjusted hourly wage, \$110.82 per hour adjusted for non-wage benefits and indirect costs two (2) hours (2 x \$110.82) to review and approve. We monetize the cost for one (1) State APS system to develop one (1) MOU to be \$561.26. For a State APS system to establish three (3) MOUs, we monetize the cost to be \$1,683.78. For fifty (50) State APS systems to develop one MOUs we monetize the cost to be \$84,189. We likewise assume that each of the three (3) entities the APS entity is entering into an MOU with will incur substantially similar costs. We monetize the expense of three (3) entities in fifty (50) states to enter into MOUs with the APS system in their State at \$84,189. We monetize the one-time total cost of establishing data sharing agreements to be \$168,378.

Cost to inform individuals of their rights under State law: We do not currently have data on the number of States informing individuals of their rights under State law. We know anecdotally some States offer potential clients a paper brochure informing them of their rights. We anticipate costs of producing and distributing such brochures to be one new pamphlet per State system or 56 pamphlets total. It will require three (3) hours of staff time by a Social and Human Service Assistants (Occupation code 21-1093) at a cost of \$19.45 per hour unadjusted hourly wage, and \$38.90 adjusted for non-wage benefits and indirect costs (3 x \$38.90) and one (1) hour for a first-line supervisor (Occupation code 43- 1011), at a cost of \$30.47 per hour unadjusted hourly wage, \$60.94 to review and approve (1 x \$60.94) for a total of \$177.64 per

State in staff time to develop each pamphlet. We monetize the one-time staff cost for 56 State systems to develop a pamphlet ($56 \times \$177.64$) at \$9,947.84. According to our NAMRS data, 806,219 client investigations were performed in FFY 2022. Each pamphlet will cost 23 cents to print and produce. Assuming a pamphlet is provided for every new client at the initiation of an investigation ($806,219 \times .23$) it would cost \$185,430.37 annually to produce and distribute pamphlets nationwide. In total, to develop a new pamphlet in all 56 States and distribute them at the beginning of all investigations would cost \$195,378.21 in staff time and materials the first year the policy is in place. Subsequently, States would incur \$185,430.37 annually to implement this provision.

3. Data Reporting to ACL

In our proposed regulations, we require States to collect and report specific data to ACL. As in our NAMRS data collection system, this data collection uses existing State administrative information systems. Therefore, States will not incur new data collection costs as the result of this rulemaking. Most of the data collected are standard data used by the agency. Operating costs of the information systems are part of State agency operations and would not be maintained solely for the purpose of submitting data in compliance with the proposed rules.

For data reporting from the State to ACL under the proposed regulations, we anticipate a similar system as NAMRS case component data currently reported voluntarily by States. We performed a burden estimate prior to launching this reporting system. We estimated for 35 States staff cost would be a total annual burden of 675 hours at \$46.00 per hour ($675 \times \46.00) for a total of \$31,050. IT staff total annual burden was estimated at 3,075 hours at \$69.00 ($3,075 \times \69.00) per hour for a total of \$212,175. Using this measure as a proxy, we estimate the proposed rule's data reporting requirements will cost a total of \$339,480 annually for all 56 State entities.

4. Record Retention

The proposed rule imposes a new requirement that APS programs retain case data for

five years. Many, but not all, programs currently retain case data for a number of years, but comprehensive information does not exist on State retention policies. We can extrapolate from data reporting in the NAMRS that most States retain case data for an average of two years.⁶¹ NAMRS is a comprehensive, voluntary, national reporting system for APS programs. It collects quantitative and qualitative data on APS practices and policies, and the outcomes of investigations into the maltreatment of older adults and adults with disabilities from every State and Territory. All but one State currently maintains an IT infrastructure that supports the retention of electronic APS data and maintains it for one year. For this reason, the cost to further store it for five years will create a de minimis cost for APS.

5. State plans and NAMRS

This will be the first times State entities are required to develop and submit State plans under section 2042 of the Elder Justice Act, 42 U.S.C. 1397m-1(b). However, States develop spending plans under 45 CFR 75.206(d) every three to five years and, based on our extensive experience working with APS systems and OAA grantees on their State plans, we do not anticipate a significantly greater level of detail for the development of State plans. We anticipate for each State the equivalent of two (2) hour of executive staff equivalent to a general and operations manager (Occupation code 11-1021), at a cost of \$55.41 per hour unadjusted adjusted hourly wage, \$110.82 adjusted for non-wage benefits and indirect costs (2 x \$110.82), and four (4) hours of a first-line supervisor (Occupation code 43- 1011), at a cost of \$30.47 per hour unadjusted hourly wage, \$60.94 adjusting for non-wage benefits and indirect costs (4 x \$60.94). State plans will be updated every three to five years. We monetize the cost of drafting one State plan at \$465.40. We monetize 56 State plans at \$26,062.40.

1. Total Quantified Costs

a. One-time costs

⁶¹The Admin. for Cmty. Living, *Adult Maltreatment Report 2020* (2021) https://acl.gov/sites/default/files/programs/2021-10/2020_NAMRS_Report_ADA-Final_Update2.pdf.

Item of Cost		
Policies and Procedures Update	\$1,221,108.80	
Policies and Procedures Implementation:	State	Federal
Training	\$550,981.16	\$25,625.40
Policies and Procedures Implementation: Data Sharing Agreements	\$168,378.00	
Policies and Procedures: Informing Individuals of Their Rights Under State Law	\$9,947.84	
TOTAL	\$1,976,041.20	

b. Ongoing costs (annual)

Item of Cost	
Policies and Procedures Implementation: Two -Tiered Response System	\$0
Policies and Procedures Implementation: Staff to Client Ratios	\$0

Policies and Procedures Implementation: Mandatory Reporter Feedback Loop	\$1,005,903.82
Policies and Procedures Implementation: Informing Individuals of Their Rights Under State Law	\$185,430.37
Data reporting to ACL	\$339,480.00
Record Retention	\$0
State plan	\$26,062.40 (renewed every three to five years)
TOTAL	\$ 1,556,876.59

d. Discussion of Benefits

Older adults who experience maltreatment are three times more likely to experience adverse consequences to health, living arrangements, or financial arrangements than their counterparts who do not experience maltreatment.⁶² According to 2022 NAMRS data, four percent or approximately 36,000 APS clients died during the course of an APS investigation. According to the Consumer Financial Protection Bureau, financial institutions reported \$1.7

⁶² M.S. Lachs et. al. *The Mortality of Elder Mistreatment*, 280(5) JAMA 428–432 (Aug. 1998) <https://pubmed.ncbi.nlm.nih.gov/9701077/>.

billion in elder financial abuse in 2017.⁶³ However, in 2016 three States projected the cost could be over \$1 billion in their State alone.⁶⁴

While this proposed rule does not directly affect the underlying causes of maltreatment, which are complex and multifactorial, it does establish a national baseline of quality in APS practice to intervene in maltreatment and mitigate harm as it is occurring. We anticipate this could reduce the number of deaths that may occur during the course of an APS investigation.

Generally speaking, the benefits of the rule are difficult to quantify. The minimum standards proposed by the NPRM are in direct response to requests from APS systems for more guidance and uniformity in policy within and among States. We anticipate that if implemented, the rule would elevate evidence-informed practices, bring clarity and consistency to programs, and improve the quality of service delivery for adult maltreatment victims and potential victims. For example, if all States implemented 24 hour per day, 7 days per week reporting acceptance protocols, an individual experiencing maltreatment may be identified earlier, and an investigation could commence and intervene sooner. Staffing ratios can promote adequate staffing, allowing a worker to devote more time to a case. Training requirements allow caseworkers to better handle and resolve cases. It may also decrease repeat abuse through post-investigation services.

Similarly, proposals on APS coordination with other entities maximize the resources of APS systems, improve investigation capacity, ensure post-investigation services are effective, reduce the imposition of multiple investigations on adults who have been harmed, and help prevent future maltreatment.

Another example of a difficult to quantify benefit is a standardized timeframe for case record retention. There are currently no minimum requirements for States to retain their records.

⁶³ U.S. Consumer. Fin. Protection. Bur., *Suspicious Activity Reports on Elder Financial Exploitation: Issues and Trends* (2019); <https://www.gao.gov/assets/gao-21-90.pdf>.

⁶⁴ U.S. Gen. Acct. Off., *GAO-21-90, HHS Could Do More to Encourage State Reporting on the Costs of Financial Exploitation* (2020) <https://www.gao.gov/assets/gao-21-90.pdf>.

The proposed rule's five-year minimum retention period facilitates States' ability to track victims and perpetrators across time to deter abuse and identify recidivism while minimizing administrative burden.

The proposed rules were informed by expert-developed evidence-informed practices as articulated in our Consensus Guidelines. These evidence-informed practices, when implemented, will result in higher quality investigations allowing APS to apprehend perpetrators of adult maltreatment with greater frequency and accuracy, in turn protecting the health and wellbeing of older adults and adults with disabilities.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) (5 U.S.C. 601 et seq.), agencies must consider the impact of regulations on small entities and analyze regulatory options that would minimize a rule's impacts on these entities. Alternatively, the agency head may certify that the rule will not have a significant economic impact on a substantial number of small entities. ACL does not anticipate that this rulemaking will have a significant economic impact on a substantial number of small businesses.

APS is a State-based social services program controlled centrally by a State office. Thirty-nine APS systems are State-administered, meaning State staff operate programs out of locally placed State offices.⁶⁵ Fifteen States are county-administered and controlled or a hybrid of State and county-administered and controlled. In county-administered systems, the State entity grants funding to local entities, including counties and non-profits, but does not perform investigatory functions. In hybrid systems, the State maintains a more active oversight and

⁶⁵ The Northern Mariana Islands and American Samoa currently have no staffed program; they are in the process of developing one.

investigatory role, but delegates to local entities. Nationally, State employees perform 70 percent of APS investigations. County and non-profit employees perform the remainder.⁶⁶

In State-administered systems, no small entities are implicated. State Government employees and offices are not small entities as defined by 5 U.S.C. 601. In the 15 county and hybrid administered systems, there are 459 counties of less than 50,000 people.⁶⁷ The administrative structure of APS is complex and data is incomplete. However, for illustrative purposes we assume that in these 459 counties there is one APS program that is a small entity under 5 U.S.C. 601, either a small government jurisdiction or non-profit.

Much of the cost of implementation will be borne by State entities in both State-administered and county and hybrid-administered States. In both such systems, the State entity exercises significant control; the State entity receives and distributes Federal funding and is responsible for revising policies and procedures, training local entities, and reporting data to ACL. We monetize the average cost per State APS system to be \$63,087.80. As an example, Colorado has an estimated 48 counties under 50,000 people. Assuming the State entity absorbs the 25 percent of the cost of implementation, each entity would incur \$985.75 in implementation expenses per year. Much of this would be a one-time expense. North Carolina has ten counties under 50,000 people. On average, assuming the State entity absorbs 25 percent of the cost burden of the rule, each small entity would incur \$4,731.58 in expense per year, much of this representing a one-time expense.

Furthermore, many small entities may already be in compliance with significant portions of these proposed regulations whether as written in policies and procedures or as informal practice.

⁶⁶ See *supra* note 4, at 20.

⁶⁷ We have made our calculations based on 2022 Census Bureau Data.

Consequently, we have examined the economic implications of the proposed rule and find that if finalized, it will not have a significant economic impact on a substantial number of small entities.

C. Executive Order 13132 (Federalism)

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement describing the agency's considerations. Policies that have federalism implications include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The proposed rule requires State APS systems to implement policies and procedures reflecting evidence-based practices. Receipt of Federal funding for APS systems under the EJA Sec. 2042, 42 U.S.C. 1397m-1(b) is contingent upon compliance with these proposed rules. Many States are already in substantial compliance with this proposal, however, some may need to revise or update their current APS policies, develop new policies or, in some cases, pass new laws or amend existing State statutes.

Consultations with State and local officials

Executive Order 13132 requires meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. As detailed in the preamble, the proposed regulations closely mirror the *2020 Voluntary Consensus Guidelines for State Adult Protective Services Systems* (Consensus Guidelines). All specific mandates (for example, day and time requirements for case response) contained in the proposed regulation reflect the Consensus Guidelines.

The Consensus Guidelines were developed with extensive input from the APS community, including State and local officials. Interested parties were invited to provide feedback for the proposed updates to the Consensus Guidelines through a public comment period

and five webinars. A Request for Information was posted on ACL's website and the comment period ran from March until May 2019. Five webinars were held during April and May 2019 hosting approximately 190 participants, representing 39 states and the District of Columbia. Participants represented ten fields, with most participants representing the APS network (66 percent). The vast majority of these APS programs are administered and staffed by State and local government entities.

The goals of the outreach and engagement process were to hear from all interested entities, including State and local officials, the public, and professional fields about their experiences with APS. The engagement process ensured affected parties understood why and how ACL was leading the development of the Consensus Guidelines and provided an opportunity to give input into the process and content of the Consensus Guidelines. ACL will also review comments on the proposed rule from State and local officials and consider any additional concerns in developing a final rule.

Nature of concerns and the need to issue this proposed rule

Community members welcomed the Consensus Guidelines and were generally in support of the process by which they were created and updated as well as the substantive content, noting that they "help set the standard and support future planning and State legislative advocacy."⁶⁸

We received comments that the Consensus Guidelines were "aspirational" and would be challenging to implement absent additional funding. We seriously considered these views in developing this proposed rule. We also completed a regulatory impact analysis to fully assess costs and benefits of the new requirements. We recognize that some of the new proposed regulatory provisions will create administrative and monetary burden in updating policies and procedures as well as potential changes to State law. However, much of this burden will be a

⁶⁸ *Report on the Updates to the Voluntary Consensus Guidelines for APS Systems*, Appendix 3: 19, https://acl.gov/sites/default/files/programs/2020-05/ACL-Appendix_3.fin_508.pdf.

one-time expense and States will have significant discretion to implement the proposed provisions in the manner best suited to State needs.

Extent to which we meet those concerns

In FY 2021, Congress provided the first dedicated appropriation to implement the Elder Justice Act section 2042(b), 42 U.S.C. 1397m-1(b), formula grants to all States, the District of Columbia, and the Territories to enhance APS, totaling \$188 million, and another \$188 million in FY 2022. The recent Consolidated Appropriations Act of 2023 included an annual appropriation of \$15 million to ACL to continue providing formula grants to APS programs under EJA section 2042(b), 42 U.S.C. 1397m-1(b). This funding is available to States for the implementation of the proposed regulation and meet the concerns commenters raised in 2019 around dedicated funding for APS systems. Additionally, the regulatory changes we propose have already been implemented by many States, and we believe the benefit of the proposed requirements will be significant.

D. Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)

ACL will fulfill its responsibilities under Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to establish procedures for meaningful consultation and coordination with tribal officials in the development of Federal policies that have Tribal implications. ACL will solicit input from affected Federally recognized Tribes as we develop these updated regulations and will conduct a Tribal consultation meeting [exact date to be specified in NPRM when NPRM publication date is known].

E. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact Statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in

the aggregate, or by the private sector, of \$100 million or more in any one year. If a covered agency must prepare a budgetary impact Statement, section 205 further requires that it select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. We have determined that this rulemaking would not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than \$100 million in any one year. Accordingly, we have not prepared a budgetary impact Statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small governments.

F. Plain Language in Government Writing

Pursuant to Executive Order 13563 of January 18, 2011, and Executive Order 12866 of September 30, 1993, Executive Departments and Agencies are directed to use plain language in all proposed and final rules. ACL believes it has used plain language in drafting the proposed rule and would welcome any comment from the public about how to make this rulemaking easier to read and understand.

G. Paperwork Reduction Act (PRA)

The proposed rule contains new information collection requirements under 5 CFR part 1320. These new burdens include: new State plans, new program performance data collection and reporting, a requirement that States generate, maintain, and retain written policies and procedures, a requirement that State APS systems disclose information to clients regarding their rights under State law, and a requirement that States generate, maintain, and retain information and data sharing agreements (while also disclosing data through such agreements).

As detailed in the regulatory impact analysis, we estimate the following total burden across all States and Territories for such requirements:

- (1) State plans: \$26,062.40 (renewed every three to five years);

- (2) Program performance data collection: \$339,480.00 (annually);
- (3) Creation of written policies and procedures: \$1,221,108.00 (one-time expense);
- (4) Disclosure to potential clients their rights under State law: \$195,378.21 (\$9,947.84 in one-time expense and \$185,430.37 annually);
- (5) Creation and maintenance of data sharing agreements: \$168,378.00 (one-time expense).

ACL will submit information to the OMB for review, as appropriate. The State plans, program performance data, written policies and procedures, disclosure to potential clients of their rights under State law, and the creation and maintenance of data sharing agreements will be submitted for approval as part of a generic clearance package for information collections related to ACL Administration on Aging programs. ACL intends to update applicable guidance as needed.

List of Subjects in 45 CFR Part 1324

Adult Protective Services, Elder Rights, Grant programs to States, Older Adults.

For the reasons discussed in the preamble, ACL proposes to amend 45 CFR part 1324 as follows:

1. Add subpart D to read as follows:

ART 1324—ALLOTMENTS FOR VULNERABLE ELDER RIGHTS PROTECTION ACTIVITIES

Subpart D—Adult Protective Services Programs

Sec.

1324.400 Eligibility for funding.

1324.401 Definitions.

1324.402 Program administration.

1324.403 Investigation and post-investigation services.

1324.404 Conflict of interest.

1324.405 Accepting reports.

1324.406 Coordination with other entities.

1324.407 APS program performance.

1324.408 State plans.

Authority: 42 U.S.C. 3011(e)(3); 42 U.S.C. 1397m-1.

§ 1324.400 Eligibility for funding.

To be eligible for funding under 42 U.S.C. 1397m-1(b) State entities are required to adhere to all provisions contained herein.

§ 1324.401 Definitions.

As used in this part, the term—

Abuse means the knowing infliction of physical or psychological harm or the knowing deprivation of goods or services that are necessary to meet essential needs or to avoid physical or psychological harm.

Adult means older adults and adults with disabilities as defined by State APS laws.

Adult maltreatment means self-neglect or abuse, neglect, exploitation, or sexual abuse of an adult at-risk of harm from a perpetrator with whom they have a trust relationship.

Adult Protective Services (APS) means such services provided to adults as the Assistant Secretary for Aging may specify in guidance and includes such services as:

- (1) Receiving reports of adult abuse, neglect, exploitation, sexual abuse, and self-neglect;
- (2) Investigating the reports described in paragraph (1) of this definition;
- (3) Case planning, monitoring, evaluation, and other case work and services, and;
- (4) Providing, arranging for, or facilitating the provision of medical, social services, economic, legal, housing, law enforcement, or other protective, emergency, or supportive services.

Adult Protective Services Program means local Adult Protective Services providers within an Adult Protective Services system.

Adult Protective Services (APS) System means the totality of both the State entity and the local APS programs.

Allegation means an accusation of adult maltreatment associated with each adult in a report made to APS. There may be multiple allegations in an investigation.

At risk of harm means the possibility that an individual will experience an event, illness, condition, disease, disorder, injury, or other outcome that is adverse or detrimental and undesirable.

Assistant Secretary for Aging means the position identified in section 201(a) of the Older Americans Act (OAA), 42 U.S.C. 3002(7).

Case means all activities related to an APS investigation of, and response to, an allegation of adult maltreatment.

Client means an adult who is the subject of an investigation by APS regarding a report of alleged adult maltreatment.

Conflict of Interest means a situation that interferes with a program or program representative's ability to provide objective information or act in the best interests of the adult. A conflict of interest would arise when an employee, officer, or agent of APS, any member of their immediate family, their partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from their affiliation with APS systems.

Dual relationship means relationships in which an APS worker assumes one or more professional, personal, or volunteer roles in addition to their role as an APS worker at the same time, or sequentially, with a client.

Emergency Protective Action means emergency use of APS funds to purchase goods or services, immediate access to petitioning the court for temporary or emergency orders, and emergency out-of-home placement.

Exploitation means the fraudulent or otherwise illegal, unauthorized, or improper act or process of a person, including a caregiver or fiduciary, that uses the resources of an adult for monetary or personal benefit, profit, or gain, or that results in depriving an adult of rightful access to, or use of, their benefits, resources, belongings, or assets.

Inconclusive means a determination that there was not sufficient evidence obtained during an APS investigation for APS to conclude whether adult maltreatment occurred.

Intake or pre-screening means the APS process of receiving allegations of adult maltreatment and gathering information on the reports, the alleged victim, and the alleged perpetrator.

Investigation means the process by which APS examines and gathers information about an allegation of adult maltreatment to determine if the circumstances of the allegation meet the States 's standards of evidence for a finding of a substantiated, unsubstantiated, or inconclusive allegation.

Mandated Reporter means someone who is required by State law to report suspected adult maltreatment to APS.

Neglect means the failure of a caregiver or fiduciary to provide the goods or services that are necessary to maintain the health or safety of an adult.

Perpetrator means the person determined by APS to be responsible for one or more instances of adult maltreatment for one or more victims.

Post-investigation Services means the activities undertaken by APS in support of a client after a finding on an allegation of adult maltreatment has been made.

Quality assurance means the process by which APS programs ensure investigations meet or exceed established standards, and includes:

- (1) Thorough documentation of all investigation and case management activities;
- (2) Review and approval of case closure; and
- (3) Conducting a case review process.

Screening means a process whereby APS carefully reviews the intake information to determine if the report of adult maltreatment meets the minimum requirements to be opened for investigation by APS, or if the report should be referred to a service or program other than APS.

Self-neglect means an adult's inability, due to physical or mental impairment or diminished capacity, to perform essential self-care tasks including:

- (1) Obtaining essential food, clothing, shelter, and medical care;
- (2) Obtaining goods and services necessary to maintain physical health, mental health, or general safety, or;
- (3) Managing one's own financial affairs.

Sexual abuse means the forced and/or unwanted sexual interaction (touching and non-touching acts) of any kind with an adult.

State entity means the unit of State, District of Columbia, or U.S. Territorial Government designated as responsible for APS programs, including through the establishment and enforcement of policies and procedures, and that receives Federal grant funding from ACL under section 2042(b) of the EJA, 42 U.S.C. 1397m-1(b).

Substantiated means APS has made an investigation disposition that the allegation of maltreatment meets state law or agency policy for concluding that the adult was maltreated.

Trust relationship means the rational expectation or belief that a relative, friend, caregiver, or other person with whom a relationship exists can or should be relied upon to protect the interests of an adult (as defined above) and/or provide for an adult's care. This expectation is based on either the willful assumption of responsibility or expectations of care or protection arising from legal or social conventions.

Unsubstantiated means that APS has made an investigation disposition that the allegation of maltreatment does not meet State law or agency policy for concluding that the adult was maltreated.

Victim means an adult who has experienced adult maltreatment.

§ 1324.402 Program administration.

(a) The State entity shall create and implement policies and procedures for APS systems to receive and respond to reports of adult maltreatment in a standardized fashion. Such policies and procedures, at a minimum, shall:

(1) Incorporate principles of person-directed services and planning and reliance on least restrictive alternatives, as well as other policies identified by the Assistant Secretary for Aging;

(2) Define the populations eligible for APS services;

(3) Define the settings, locations, and types of alleged perpetrator for each adult maltreatment type that are subject to APS investigations in the State;

(4) Define processes for receiving, screening, prioritizing, and referring cases based on risk and type of adult maltreatment consistent with § 1324.403, including:

(i) Creation of at least a two-tiered response system for initial contact with the alleged victim based on risk of death, irreparable harm, or significant loss of income, assets, or resources.

(A) For immediate risk, response should occur in person no later than twenty-four hours after receiving a report of adult maltreatment.

(B) For non-immediate risk, response should occur no more than seven calendar days after report of adult maltreatment is received.

(5) Define investigation and post-investigation procedures, as identified in § 1324.403.

(b) At first contact APS systems shall provide to potential APS clients an explanation of their rights, including:

(1) The right under State law to confidentiality of personal information;

(2) The right under State law to refuse to speak to APS;

(3) The right under State law to refuse APS services, and;

(4) Such other explanations of rights as determined by the Assistant Secretary for Aging.

(c) Information shall be provided in a format and language understandable by the individual, and in alternative formats as needed.

(d) The State entity shall establish policies and procedures for the staffing of APS systems that include:

- (1) Staff training and on-going education, including training on conflicts of interest;
- (2) Staff supervision, and;
- (3) Staff to client ratios.

(e) The State entity shall establish such other program administration policies and procedures and provide other information to APS clients as established by the Assistant Secretary for Aging.

§ 1324.403 Investigation and post-investigation services.

The State entity shall adopt standardized and systematic policies and procedures for APS investigation and post-investigation activities across and within the State including, at a minimum:

(a) Screening, triaging, and decision-making criteria or protocols to review and assign adult maltreatment reports for APS investigation, and to report to other authorities;

(b) Tools and/or decision-making processes for APS to review reports of adult maltreatment for any emergency needs of the adult and for immediate safety and risk factors affecting the adult or APS worker when responding to the report and;

(c) Practices during investigations to collect information and evidence to inform allegation disposition and service planning that will:

- (1) Recognize acceptance of APS services is voluntary, except where limited by State law;
- (2) Ensure safety of APS client and worker;
- (3) Ensure the preservation of an adult's rights;
- (4) Integrate principles of person-directedness and trauma-informed approaches;

(5) Maximize engagement with the APS client, and;

(6) Permit APS to seek emergency protective action only as appropriate and necessary as a measure of last resort to protect the life and wellbeing of the client from self-harm or harm from others.

(d) Methods to make determinations on allegations and record case findings, including:

(1) Ability for APS programs to consult with appropriate experts, other team members, and supervisors;

(2) Protocols for the standards of evidence APS should apply when making a determination on allegations.

(e) Provision of APS post-investigation services, as appropriate, that:

(1) Respect the autonomy and authority of clients to make their own life choices;

(2) Respect the client's views about safety, quality of life, and success;

(3) Hold perpetrators accountable for the adult maltreatment and for stopping the abusive behavior;

(4) Develop any service plan or referrals in consultation and agreement with the client;

(5) Engage community partners through referrals for services or purchase of services where services are not directly provided by APS, and;

(6) Monitor the status of client and services, and the impact of services.

(f) Case handling criteria that:

(1) Establish timeframes for on-going review of open cases;

(2) Establish length of time by which investigations should be completed, and determinations be made; and

(3) Documents, at a minimum:

(i) The APS interventions and services delivered;

(ii) Significant changes in client status;

- (iii) Assessment of the outcome and efficacy of intervention and services;
- (iv) Assessment of safety and risk at case closure; and
- (v) The reason or decision to close the case.

§ 1324.404 Conflict of interest.

The State entity shall establish standardized policies and procedures to avoid both actual and perceived conflicts of interest for APS. Such policies and procedures must include mechanisms to identify, remove, and remedy any existing conflicts of interest at organizational and individual levels, including to:

- (a) Ensure that employees and agents engaged in any part of an APS investigation do not also provide direct services to, or oversee the direct provision of services, to the client;
- (b) Ensure that employees and agents administering APS programs do not have a personal financial interest in an entity to which an APS program they refer clients to services recommended by the APS program;
- (c) Ensure that no APS employee or agent, or member of an employee or agent's immediate family, is subject to conflict of interest;
- (d) Prohibit dual relationships unless unavoidable and ensure appropriate safeguards are established should such relationships occur;
- (e) Establish robust monitoring and oversight, to identify conflict of interest, and;
- (f) Remove and remedy actual, perceived, or potential conflicts that arise.

§ 1324.405 Accepting reports.

(a) The State entity shall establish standardized policies and procedures for receiving reports of adult maltreatment 24 hours per day, 7 calendar days per week, using multiple methods of reporting to ensure accessibility.

(b) The State entity shall establish standardized policies and procedures for APS to accept reports of alleged adult maltreatment by mandatory reporters that:

(1) Shares information regarding a report to APS with the mandated reporter which shall include, at a minimum:

(i) Whether a case has been opened as a result of the report, and;

(ii) The disposition or finding of the allegation in the report.

(c) The State entity shall establish and adhere to standardized policies and procedures to maintain the confidentiality of reporters and information provided in a report.

§ 1324.406 Coordination with other entities.

(a) State entities shall establish policies and procedures, consistent with State law, to ensure coordination and to detect, prevent, address, and remedy adult maltreatment with other appropriate entities, including but not limited to:

(1) Other APS programs in the state, when authority over APS is divided between different jurisdictions or agencies;

(2) Other governmental agencies that investigate allegations of adult maltreatment, including, but not limited to, the State Medicaid agency, State nursing home licensing and certification, State department of health and licensing and certification, and tribal governments;

(3) Law enforcement agencies with jurisdiction to investigate suspected crimes related to adult maltreatment; State or local police agencies, tribal law enforcement, State Medicaid Fraud Control Units, and Federal law enforcement agencies;

(4) Organizations with authority to advocate on behalf of individuals who experienced the alleged adult maltreatment, such as the State Long-Term Care Ombudsman Program and/or investigate allegations of adult maltreatment such as the Protection and Advocacy Systems;

(5) Emergency management systems, and;

(6) Banking and financial institutions.

(b) Policies and procedures must, at a minimum:

(1) Address coordination and collaboration to detect, prevent, address, and remedy adult maltreatment during all stages of an adult maltreatment investigation conducted by APS or by

other agencies and organizations with authority and jurisdiction to investigate reports of adult maltreatment;

(2) Address information sharing on the status and resolution of investigations between the APS system and other entities responsible in the state or other jurisdiction for investigation, to the extent permissible under applicable State law, and;

(3) Allow for the establishment of memoranda of understanding, where appropriate, to facilitate information exchanges, quality assurance activities, cross-training, development of formal multidisciplinary and cross agency adult maltreatment teams, co-location of staff within appropriate agencies, and other activities as determined by the State entity.

§ 1324.407 APS program performance.

The State entity shall develop policies and procedures for APS for the collection and maintenance of data on investigations conducted by APS systems. They shall:

(a) Collect and report annually to ACL such APS system-wide data as required by the Assistant Secretary for Aging.

(b) Develop policies and procedures to ensure that the APS system retains individual case data obtained from APS investigations for a minimum of 5 years.

§ 1324.408 State plans.

(a) State entities must develop and submit to the Director of the Office of Elder Justice and Adult Protective Services, the position designated by 42 U.S.C. 3011(e)(1), a State APS plan that meets the requirements set forth by the Deputy Assistant Secretary for Aging.

(b) The State plan shall be developed by the State entity in collaboration with APS programs.

(c) The State plan shall be updated at least every five years but as frequently as every three years.

(d) The State plan shall contain an assurance that all policies and procedures described herein will be developed and adhered to by the State APS system;

(e) State plans will be reviewed and approved by the Director of the Office of Elder Justice and Adult Protective Services. Any State dissatisfied with the final decision of the Director of the Office of Elder Justice and Adult Protective Services may appeal to the Deputy Assistant Secretary for Aging within 30 calendar days of the date of the Director of the Office of Elder Justice and Adult Protective Services' final decision and will be afforded the opportunity for a hearing. If the State is dissatisfied with the final decision of the Deputy Assistant Secretary for Aging, it may appeal to the Assistant Secretary for Aging within 30 calendar days of the date of the Deputy Assistant Secretary for Aging's decision.

Dated: September 6, 2023.

Xavier Becerra,

Secretary,

Department of Health and Human Services.

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